

**State of Wisconsin  
Department of Safety & Professional Services**

**AGENDA REQUEST FORM**

<b>1) Name and Title of Person Submitting the Request:</b>  Dave Carlson		<b>2) Date When Request Submitted:</b>  5/6/13 Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> <li>▪ 10 work days before the meeting for Medical Board</li> <li>▪ 14 work days before the meeting for all others</li> </ul>	
<b>3) Name of Board, Committee, Council, Sections:</b>  Medical Examining Board			
<b>4) Meeting Date:</b>  5/15/13	<b>5) Attachments:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>6) How should the item be titled on the agenda page?</b> Review of 2012 Medical Examining Board Annual Report	
<b>7) Place Item in:</b> <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	<b>8) Is an appearance before the Board being scheduled?</b>  <input type="checkbox"/> Yes ( <a href="#">Fill out Board Appearance Request</a> ) <input type="checkbox"/> No	<b>9) Name of Case Advisor(s), if required:</b>	
<b>10) Describe the issue and action that should be addressed:</b>  The Board will review and suggest edits, if needed, to the draft 2012 Medical Examining Board Annual Report.			
<b>11) Authorization</b>			
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
<b>Directions for including supporting documents:</b> 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

# Wisconsin Medical Examining Board Annual Report



January 1 – December 31, 2012

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## Board Membership and Department Personnel

The Medical Examining Board (**MEB**) consists of 13 members who are all appointed by the Governor and approved by the Senate. The listing below includes all individuals who served a whole or partial year on the Board in 2012.

### 2012 MEB Members

Sheldon Wasserman, MD, Chair (Milwaukee)  
Gene Musser, MD, Vice-Chair (Madison)  
Jude Genereaux, Public Member, Secretary (Ellison Bay)  
James Barr, Public Member (Chetek)  
Carolyn Bronston, Public Member (Wausau)  
Mary Jo Capodice, MD (Sheboygan)  
Greg Collins, Public Members (De Pere)  
James Conterato, MD (Marshfield)  
Rodney Erickson, MD (Tomah)  
LaMarr Franklin, Public Member (Glendale)  
Sujatha Kailas, MD MBA (Fond du Lac)  
Christopher Magiera, MD (Wausau)  
Raymond Mager, DO (Bayside)  
Suresh Misra, MD (Milwaukee)  
Sandra Osborn, MD (Madison)  
Kenneth Simons, MD (Milwaukee)  
Timothy Swan, MD (Marshfield)  
Sridhar Vasudevan, MD (Belgium)  
Timothy Westlake, MD (Hartland)

### 2012 Executive Staff

Dave Ross, Secretary  
Bill Wendle, Deputy Secretary  
Greg Gasper, Executive Assistant

### Administrative Staff

Tom Ryan, Executive Director  
Sandra Nowack, Legal Counsel  
Yolanda McGowan, Legal Counsel  
Pam Stach, Legal Counsel  
Shawn Leatherwood, Advanced Paralegal  
Karen Rude-Evans, Bureau Assistant  
Matt Niehaus, Bureau Assistant

## **Executive Summary**

The primary responsibility and obligation of the Wisconsin Medical Examining Board is to protect health care consumers by ensuring that all credential holders are appropriately credentialed and comply with laws and regulations pertaining to the practice of the profession. The Wisconsin Medical Examining Board protects the public from incompetent and unprofessional practice through laws and regulations that define the practice of medicine and the responsibility of the Board to regulate it. This guidance is outlined in state statute, which is referred to as the Practice Act. Within this legislative charge, the Board performs three principal duties in fulfilling its mission: 1) Writing Administrative Code (rules); 2) Credentialing professionals; 3) Disciplining professionals for unsafe and incompetent practice and unprofessional conduct. Activities of the Board are funded by licensing and registration fees.

The purpose of this report is to provide information about the Board's activity and progress made in 2012.

# MEDICAL EXAMINING BOARD



## **DIVISION OF LEGAL SERVICES AND COMPLIANCE STATISTICS**

**(January 1, 2012 – December 31, 2012)**

## DIVISION OF LEGAL SERVICES AND COMPLIANCE

The Division of Legal Services and Compliance (DLSC) is a public law office which provides legal services to professional boards and regulated industries. As part of these services, DLSC provides a specially funded Medical and Affiliates Prosecution Team which consists of intake staff, investigators, paralegals, prosecutors and a designated board counsel. DLSC also monitors compliance with disciplinary orders and administers the Professional Assistance Procedure -- a confidential monitoring program for impaired professionals.

Over the past two years, DLSC Enforcement Teams have had unprecedented success in resolving the backlog of pending cases. This has resulted in more manageable caseloads, and in turn, higher levels of consumer protection and a renewed focus on quality legal work. DLSC has the capacity to allocate resources as necessary to ensure responsible consumer protection.

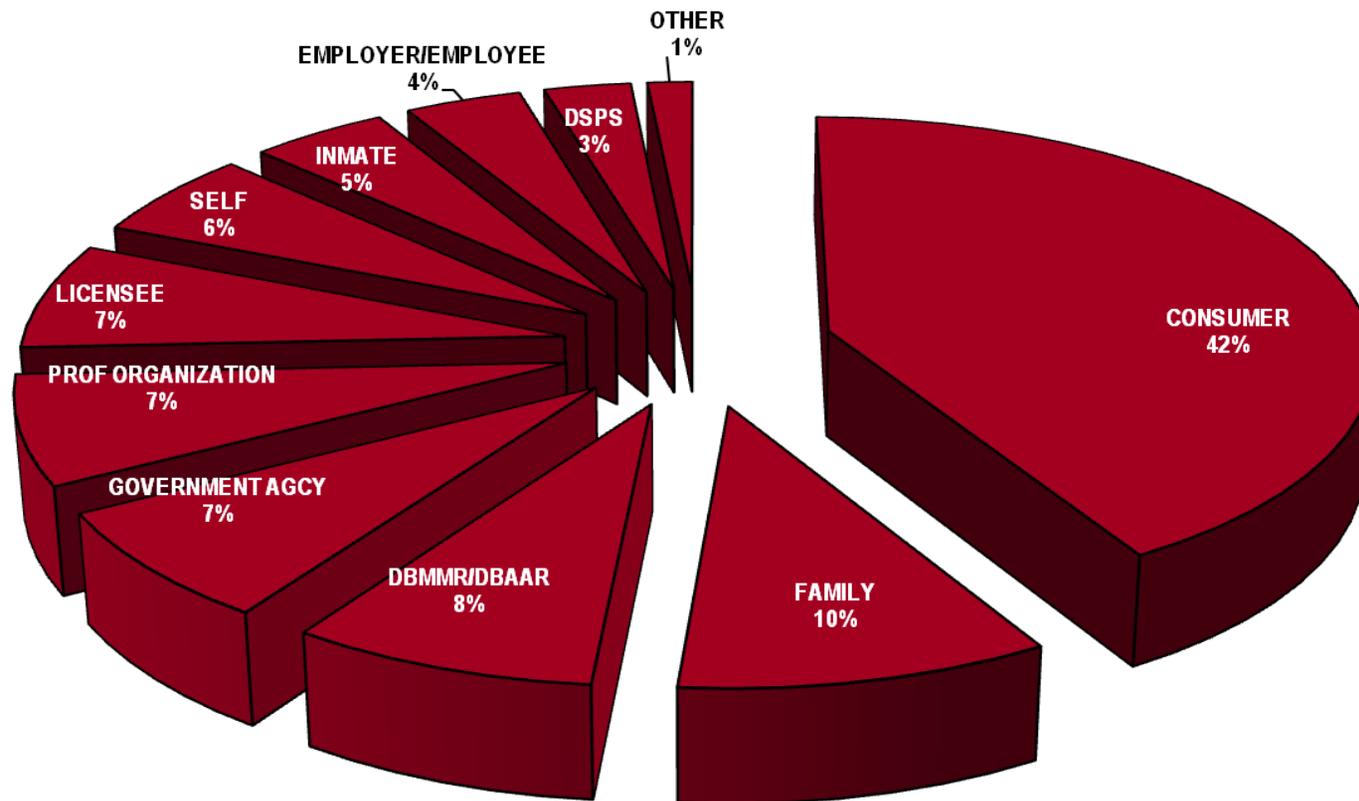
### Key DLSC statistics for 2012 for the Medical Examining Board (MEB) include:

- Complaints Received: **460**
- Complaints Resolved:
  - Suspensions/Surrenders/Revocation issued by the MEB: **47**
  - Cases resolved formally by the MEB (through prosecution and negotiated stipulations): **107**
  - Complaints closed by the MEB after Investigation (without a Formal Order): **137**
  - Complaints closed by the Board's Screening Panels: **303**
- MEB Case Backlog Eliminated: Cases from 2009 pending (**5**) and 2010 (**2**) -- all in hearing
- DLSC Compliance with Statutory Deadlines (death and three year cases): **100%**
- Average Resolution Time for Formal Orders - **18.3** months and for cases closed after investigation - **8.3** months

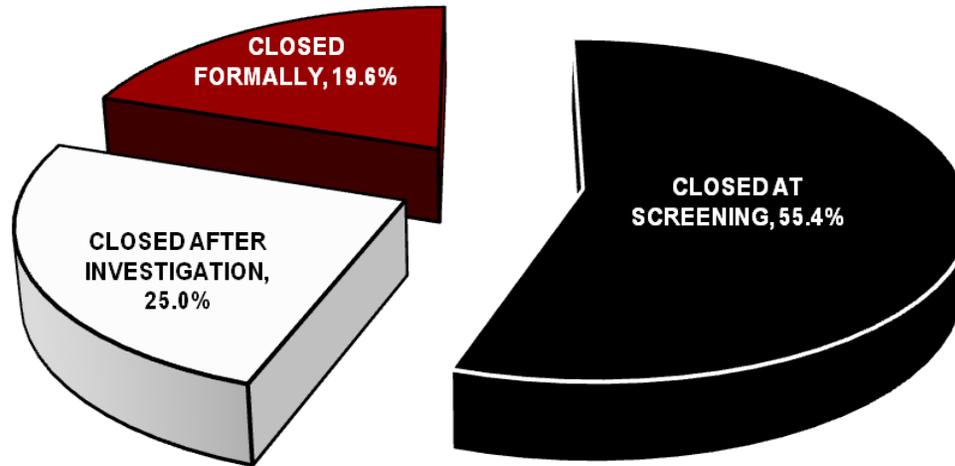
In 2012, DLSC consolidated legal services, implemented staff production metrics and quality control procedures, standardized templates and conducted legal training, which has resulted in enhanced efficiencies, higher standards of service to our Boards and responsible consumer protection. These improved services are reflected in our statistics. DLSC respects and values the MEB's service to the State of Wisconsin and members of its profession. We look forward to continuing our partnership in 2013 and working hard to continue to improve our services to the MEB and to the public, including our revamped case advisor training methods and materials which will be unveiled in the weeks to come.

**Note:** In January 2011 DLSC had a total of **221** cases in backlog status for all professional boards (defined as cases aged 2008 or older). Currently, the backlog has been all but eliminated with **only 2** cases from 2008 - both in hearing. Only **17** cases remain for all boards from 2009 and 2010. This accomplishment is unprecedented in the Department's history.

# SOURCE OF COMPLAINTS IN 2012



## COMPLAINTS CLOSED - 2012



**CLOSED AT SCREENING: 303 (55.4%)**

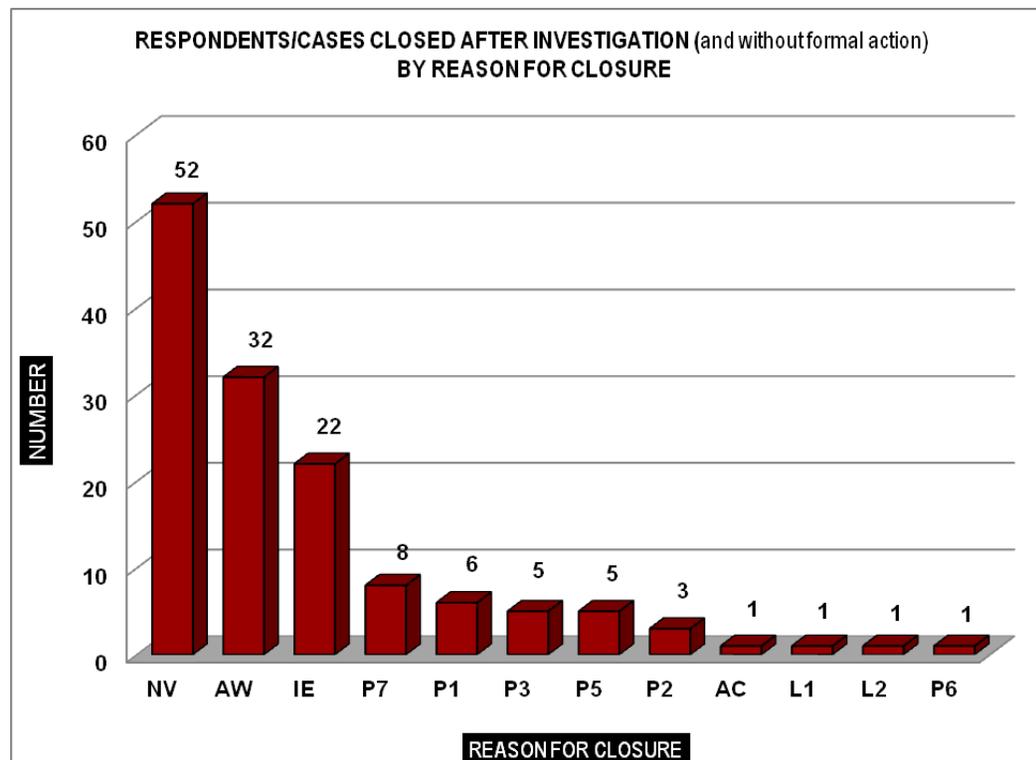
Copies of the complaint and related information are screened by the Medical Examining Board Screening Panel and DLSC legal staff to determine if an investigation is warranted. Complaints that do not warrant investigation are closed.

**CLOSED AFTER INVESTIGATION WITHOUT A FORMAL ORDER: 137 (25.0%)**

The investigator and attorney develop an investigative plan. Investigative staff gathers necessary evidence and makes contacts with witnesses. The case advisor is consulted on issues requiring professional expertise. The results of the investigation are provided to and discussed with the case advisor. The case advisor makes a final recommendation on the professional aspects of the case. The attorney makes a final recommendation on the legal aspects of the case. Cases that do not warrant professional discipline are closed. *This category includes Administrative Warnings: Issued if a violation is of a minor nature and a first occurrence and the warning will adequately protect the public. Not reported to the National Practitioner's Data Bank (NPDB). The content of the warning is not public information.*

**CLOSED WITH FORMAL ORDER: 107 (19.6%)**

Cases may resolve by means of stipulated agreements. Cases may go to hearing where the DLSC attorney litigates the case before an administrative law judge (ALJ). After the Hearing, the ALJ issues a proposed decision which is reviewed by the board. If a violation is found, discipline may be imposed.



- **NO VIOLATION OF STATUTES OR RULES (NV)** - There is sufficient evidence to show that no violation of statutes or rules occurred.
- **ADMINISTRATIVE WARNING (AW)** - There was an Administrative Warning issued to the credential holder pursuant to Sec. 440.205, Stats. Administrative warnings do not constitute an adjudication of guilt or the imposition of discipline and may not be used as evidence that the credential holder is guilty of the alleged misconduct.
- **INSUFFICIENT EVIDENCE FOR PROSECUTION (IE)** - There is insufficient evidence to meet the standard of proof required to prove that a violation occurred.
- **PROSECUTORIAL DISCRETION (P7)** - There may have been a violation, but the regulatory authority has taken action in regard to this credential holder that addressed the conduct and further action is unnecessary.
- **PROSECUTORIAL DISCRETION (P1)** - There may have been a minor or technical violation but a decision was made not to commence formal disciplinary action because the incident in question was not seriously harmful to the public.
- **PROSECUTORIAL DISCRETION (P3)** - There may have been a violation that is more than a minor or technical violation. However, it is not a violation, which caused serious harm, and a determination has been made that the expenditure of resources required to pursue the violation would greatly exceed the value to the public of having the matter pursued.
- **PROSECUTORIAL DISCRETION (P5)** - There may have been a violation, but because the person or entity in question cannot be located, is no longer actively practicing or does not have a current credential to practice, a decision was made to close the case and place a "FLAG OR HOLD" on the credential in accordance with the Department's "Hold Status and Flagged Credentials" Policy. In the event that the person or entity is located an application for renewal of the credential is received or the credential is renewed, the case may be re-opened and reconsidered.
- **PROSECUTORIAL DISCRETION (P2)** - There may have been a minor or technical violation but a decision was made not to commence formal disciplinary action on the grounds that compliance with statutes or rules has been gained.
- **ADMINISTRATIVE CLOSURE (AC)** - There is a duplicate complaint; a file was opened in error; or the Respondent named in the complaint is inaccurately identified.
- **LACK OF JURISDICTION (L1)** - There is no authority to act regarding the subject matter of the complaint.
- **LACK OF JURISDICTION (L2)** - There is authority to act on the subject matter or the complaint, but no authority to act regarding the person or entity in question.
- **PROSECUTORIAL DISCRETION (P6)** - There may have been a violation, but litigation is pending which involves the credential holder and affects the licensing authority's ability to investigate the case. At the conclusion of the litigation, the case will be reviewed and the licensing authority may consider the case once again.

## TYPE OF DISCIPLINE/OUTCOME ISSUED FROM FINAL DECISIONS and ORDERS

TYPE OF DISCIPLINE/OUTCOME	NUMBER
REPRIMAND	49
LIMITATION REQUIRING EDUCATION/TESTING WITH FINDINGS	32
LIMITATION RESTRICTING PRACTICE WITH FINDINGS	16
LIMITATION REQUIRING REPORTS WITH FINDINGS	11
SURRENDER/AGREEMENT - IF REAPPLY BOARD MAY IMPOSE LIMITATIONS	9
SUSPENSION (STAYED)	9
SURRENDER/AGREEMENT - RENEW UPON PAYMENT OF FEE	8
LIMITATION - MAINTAIN COMPLIANCE WITH EACH TERM OF ANOTHER STATE ORDER	7
LIMITATION REQUIRING TREATMENT WITH FINDINGS	7
LIMITATION REQUIRING MENTOR/SUPERVISION WITH FINDINGS	6
SURRENDER/AGREEMENT - REQUIREMENTS TO BE MET BEFORE REAPPLYING	6
LIMITATION REQUIRING SCREENS WITH FINDINGS	4
LIMITATION REQUIRING ASSESSMENT WITH FINDINGS	3
SURRENDER/AGREEMENT NOT TO RENEW WITH FINDINGS	3
SURRENDER/AGREEMENT NOT TO RENEW WITHOUT FINDINGS	3
SUSPENSION	3
SUSPENSION WITHOUT FINDINGS	2
REMEDIAL EDUCATION WITHOUT FINDINGS - NON DISCIPLINARY	2
SUSPENSION (SUMMARY)	2
DISMISSAL AFTER HEARING DUE TO ADDITIONAL INFORMATION	1
LIMITATION REQUIRING MENTOR/SUPERVISION WITHOUT FINDINGS	1
LIMITATION REQUIRING TREATMENT WITHOUT FINDINGS	1
LIMITATION RESTRICTING PRACTICE WITHOUT FINDINGS	1
REVOCAION	1
SUSPENSION (STAYED) WITHOUT FINDINGS	1
<b>TOTAL</b>	<b>188</b>

**DISMISSAL:** An Order of judgment finally disposing of an action.

**LIMITATION:** Defined in Wis. Stat. § 440.01(1)(d) to mean "to impose conditions and requirements upon the holder of the credential, to restrict the scope of the holder's practice, or both."

**REPRIMAND:** A public warning of the licensee for a violation.

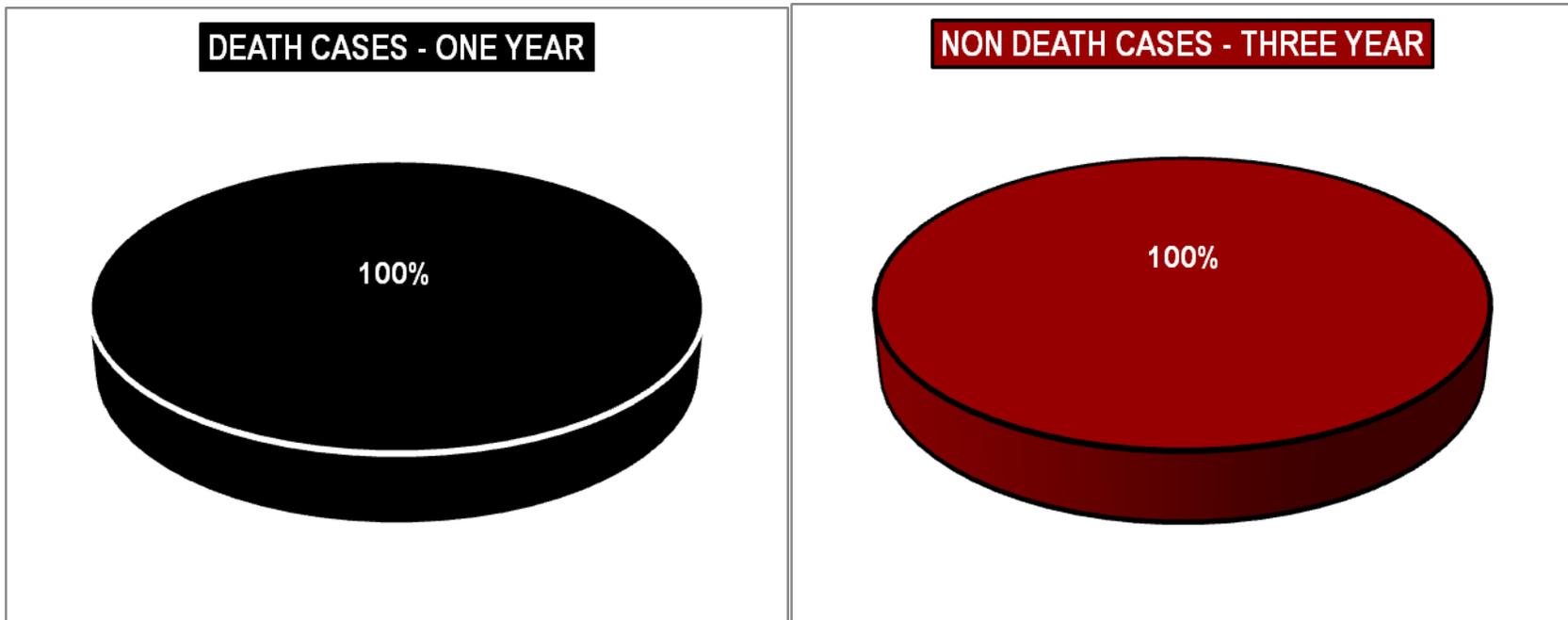
**SUSPENSION (SUMMARY):** Expedited disciplinary procedure used when necessary for immediate protection of the public health, safety or welfare.

**SUSPENSION:** Wis. Stat. § 440.01(h) "to completely and absolutely withdraw and withhold for a period of time all rights, privileges and authority previously conferred by the credential." Licensee may not engage in the practice of the profession during term of suspension.

**REVOCAION:** Wis. Stat. § 440.01(f) "to completely and absolutely terminate the credential and all rights, privileges and authority previously conferred by the credential.

*\* This chart does not include Administrative Warnings because they are not considered disciplines.*

## PERCENTAGE OF CASES/RESPONDENTS THAT MET THE STATUTORY DEADLINE IN 2012



**Wis. Stat. § 448.02(3)(cm) – The Board may initiate disciplinary action against a physician no later than one year after initiating an investigation of an allegation involving the death of a patient and no later than three years after initiating an investigation of any other allegation, unless the Board shows to the satisfaction of the Secretary that a specified extension of time is necessary for the Board to determine whether a physician is guilty of unprofessional conduct or negligence in treatment.**

Date initiating an investigation – Wis. Admin. Code § SPS 2.20(2) Computing Time Limits. In computing time limits under s. 448.02(3)(cm), the date of initiating an investigation shall be the date of the decision to commence an investigation of an informal complaint following the screening of the informal complaint under s. SPS 2.023, except that if the decision to commence an investigation of an informal complaint is made more than 45 days after the date of receipt of the informal complaint in the division, or if no screening of the informal complaint is conducted, the time for initiating an investigation shall commence 45 days after the date of receipt of the informal complaint in the division. The date that the Medical Examining Board initiates a disciplinary action is the date that a disciplinary proceeding is commenced under s. SPS 2.04.

## LICENSEES IN MONITORING PROGRAM AS OF MARCH 6, 2013

Active: 154

Inactive: 108

Active monitoring is the monitoring of cases with pending requirements with specific due dates or timeframes. Such cases require affirmative work by monitoring staff to ensure compliance. Examples of these requirements are costs, work reports, drug screens, therapy/work supervisor reports, etc.

Inactive or passive monitoring is the monitoring of cases with requirements that have no specific due date or timeframe. No work is generally required to determine compliance. Examples are indefinite suspensions, permanent limitations, revocations, voluntary surrenders.

### TYPES OF DISCIPLINES THAT REQUIRE MONITORING

1. **Remedial Education:** The licensee is required to take continuing education in a specific topic.
2. **Exam:** The licensee is required to take and pass successfully an examination (ex. FSMB's Special Purpose Examination).
3. **Impairment:** The licensee is suspended for a period of usually five years with stays allowing the licensee to practice as long as the person remains in compliance with the Order. The licensee must undergo random drug screens, attend AA/NA meetings, enter into treatment, submit self reports, and arrange for therapy reports and mentor reports.
4. **Limitations:** Impose conditions and requirements upon the holder of the credential, or restrict the scope of the holder's practice, or both.
5. **Mentor:** The licensee is required to have a professional mentor, which provides practice evaluations as specified by the Order.
6. **Reports:** The licensee is required to have reports by a therapist or supervisor submitted to the Department.
7. **Revocation:** The licensee must return their license to DSPS and is prohibited from practice in the State of Wisconsin. If the credential holder petitions for reinstatement, the Board may grant the reinstatement with or without conditions.
8. **Suspension:** A licensee is suspended from practice for a set period of time or indefinitely. Some suspensions may be stayed under specific conditions.
9. **Voluntary Surrender:** The licensee surrenders the registration and/or license. The licensee is prohibited from practice in the State of Wisconsin. If the person petitions for reinstatement, the Board may grant the reinstatement with or without conditions. Some Orders prohibit the person from being reinstated after surrendering.

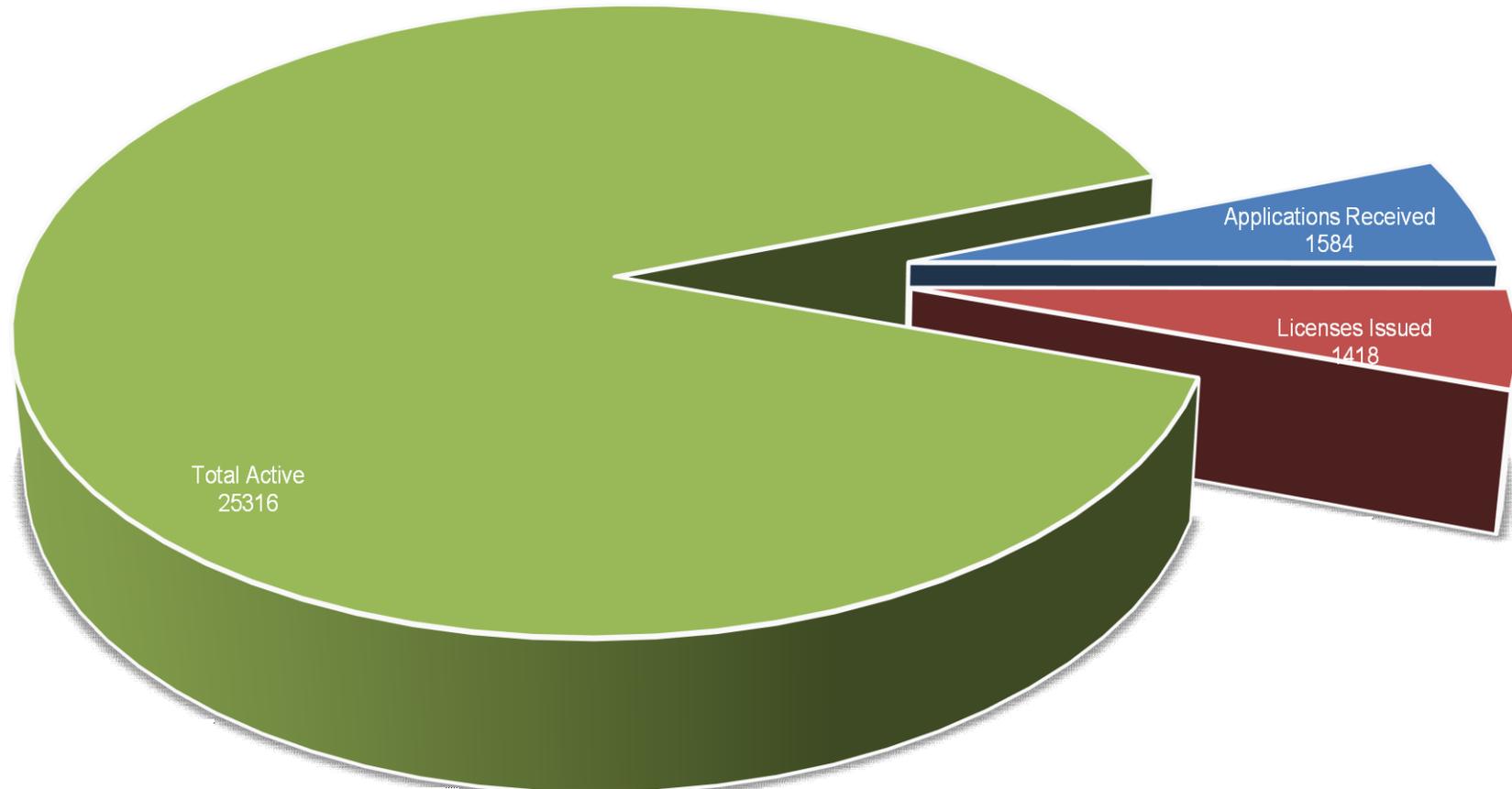
## **CREDENTIALING ACTIVITY**

The goal of the WI Department of Safety and Professional Services and the WI Medical Examining Board is to ensure, through the issuance of credentials, that the public's health, safety and welfare are adequately protected. In 2012, three credentialing specialists worked exclusively on licensing physicians and associated professionals ensuring that applications meet eligibility requirements established in Wisconsin statutes and administrative code. Staff for the Medical Examining Board issue over 1,400 new physician credentials annually and renews more than 23,000 licenses biennially.

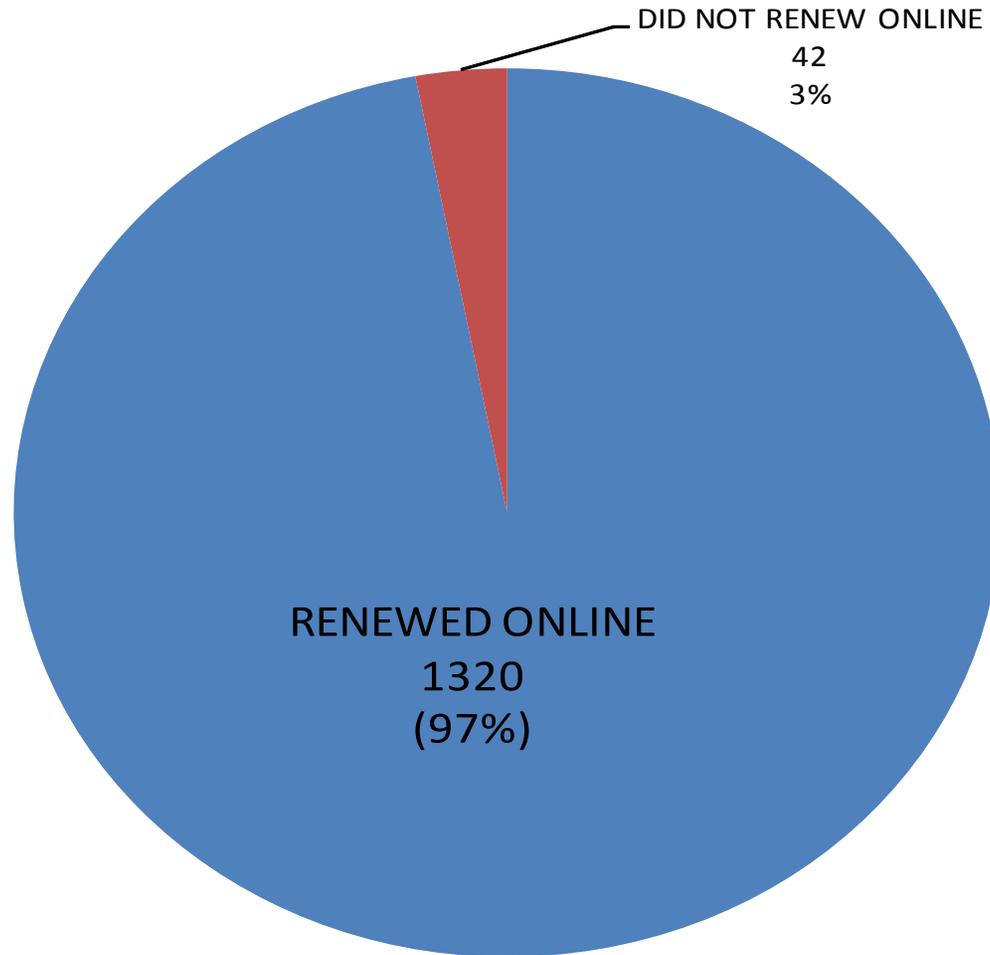
### 2012 Experience:

- The average time to review new applications was 7 days. In most cases, licenses were issued on the same day that all documents were received and all requirements were met.
- Processing time for license verifications was 3-5 business days. Through the new Online Verification System, verifications can be processed within the same day.
- Approximately 97 percent of licenses were renewed online.
- 69 license candidates sat for the oral exam.

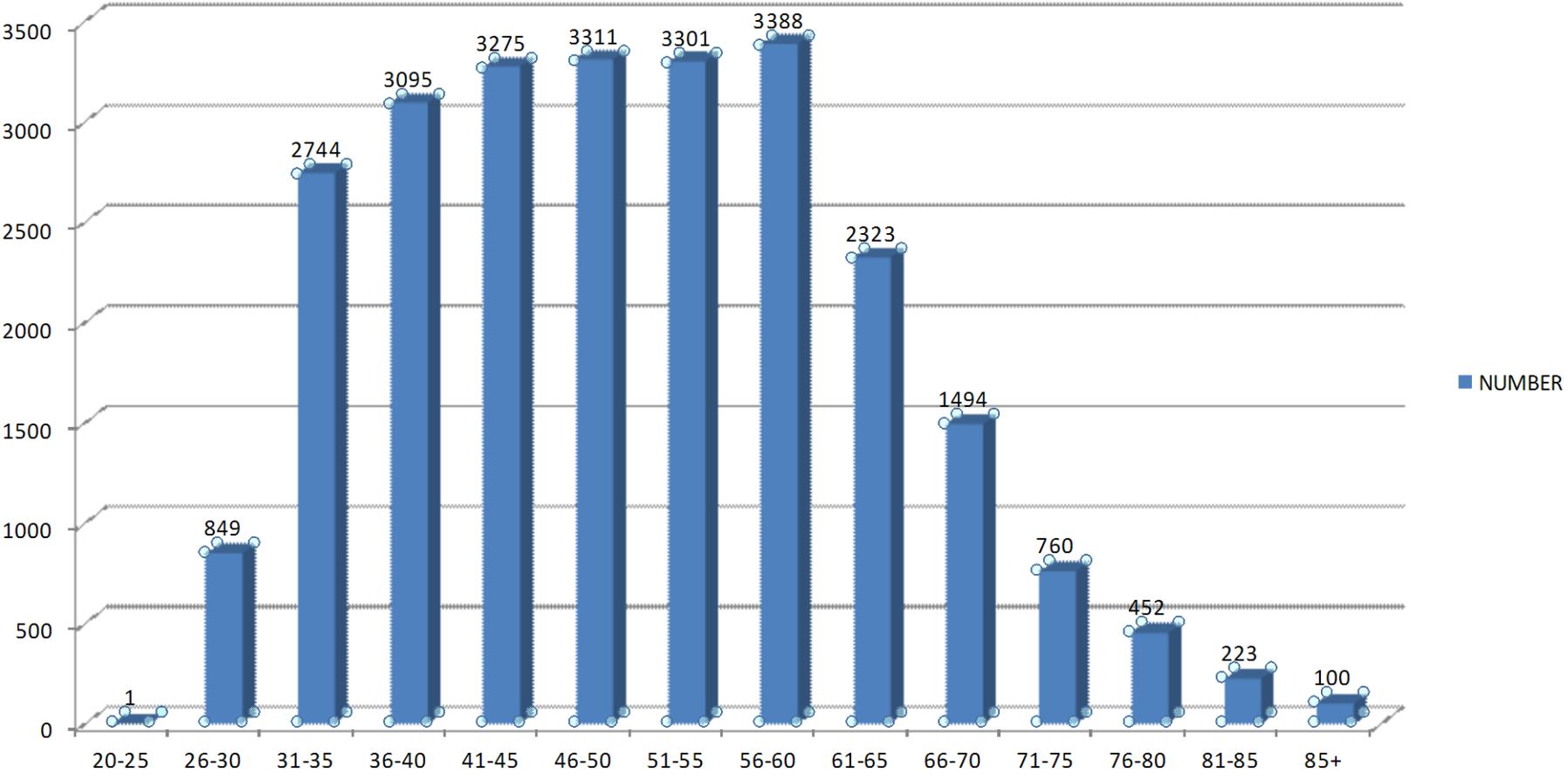
## 2012 MD/DO CREDENTIALING ACTIVITY



# Total DO Licenses Renewed

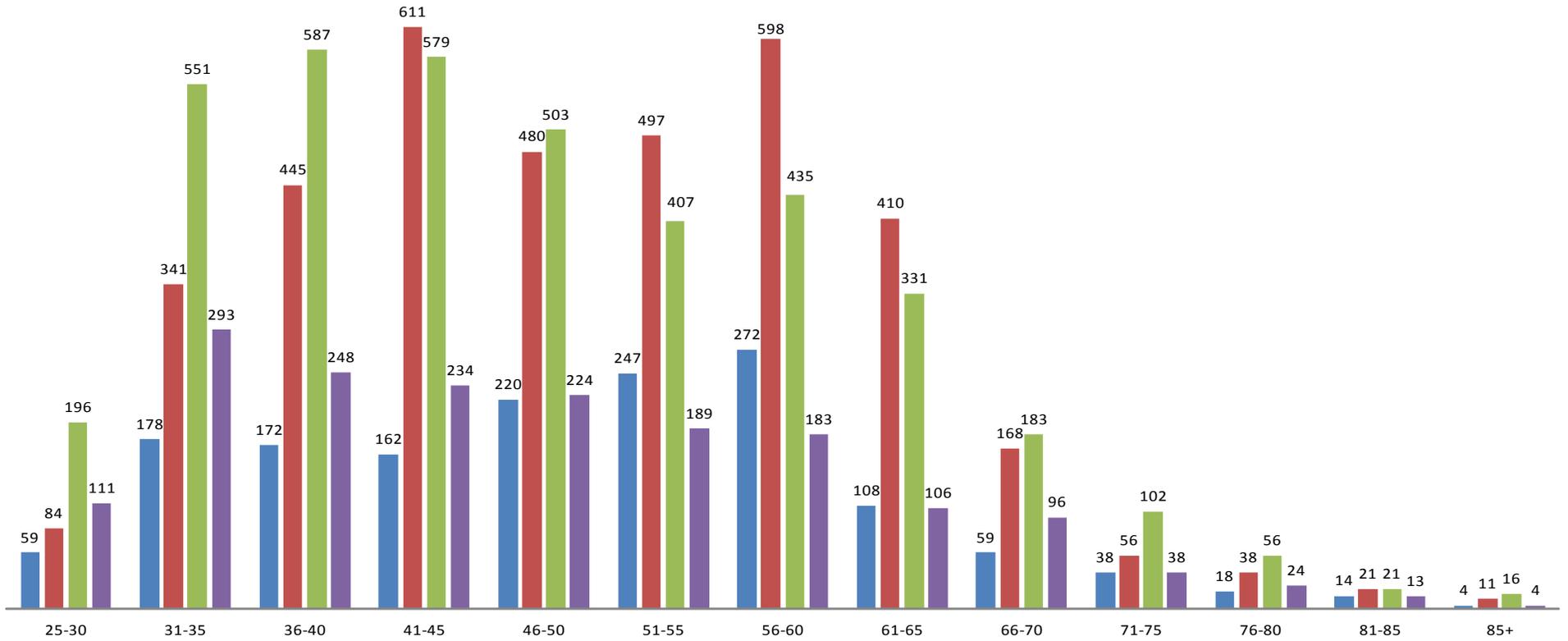


# Physicians By Age

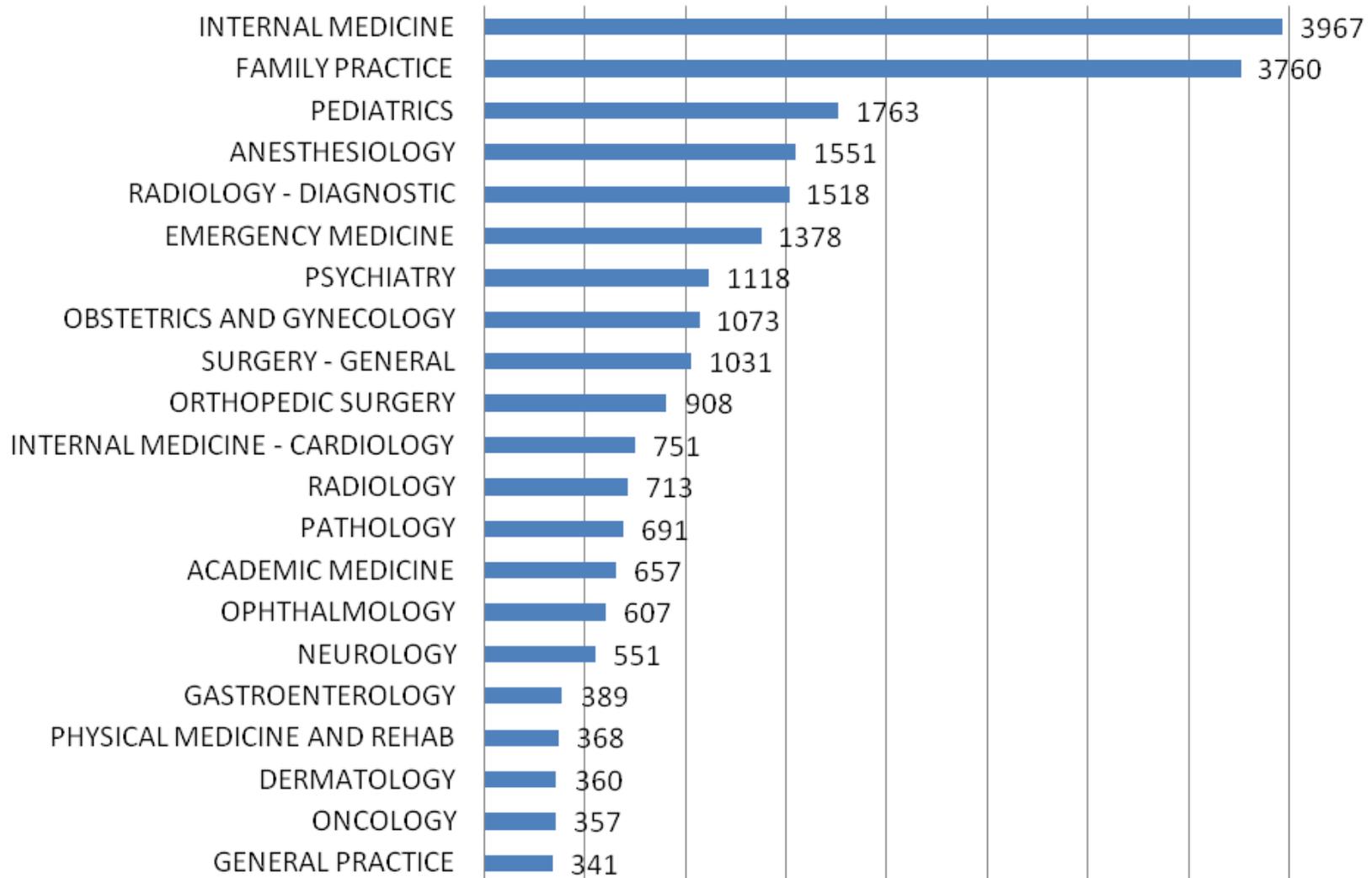


## Age of Physicians in the Four Largest Specialty Groups

■ ANESTHESIOLOGY 
 ■ FAMILY PRACTICE 
 ■ INTERNAL MEDICINE 
 ■ PEDIATRICS



## Physicians by Specialty





## 2013 ASSEMBLY BILL 139

April 5, 2013 - Introduced by Representatives J. OTT, SEVERSON, CZAJA, JACQUE, BROOKS, STRACHOTA, MARKLEIN, A. OTT, KESTELL, MURPHY, STROEBEL, NYGREN, BIES, BALLWEG, STONE, T. LARSON, ENDSLEY and LEMAHIEU, cosponsored by Senators GROTHMAN, VUKMIR, FARROW, COWLES, TIFFANY, OLSEN, DARLING, MOULTON and LASEE. Referred to Committee on Judiciary.

1     **AN ACT** *to repeal* 448.30 (1); *to amend* 448.30 (intro.); and *to create* 448.30 (7)  
2             of the statutes; **relating to:** the duty of physicians to inform patients of  
3             treatment options.

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### *Analysis by the Legislative Reference Bureau*

Under Wisconsin's physician informed consent law, a physician who treats a patient has a duty to inform the patient about the availability of all alternate, viable medical modes of treatment and the benefits and risks of those treatments, subject to certain exceptions. A physician who fails to so inform a patient about modes of treatment may be held civilly liable for damages under tort law. The Wisconsin Supreme Court has employed a "reasonable patient standard" to determine whether a physician has fulfilled his or her duty. Under the reasonable patient standard, a physician must disclose information necessary for a reasonable person in the patient's position to make an intelligent decision with respect to the choices of treatment. The Wisconsin Supreme Court has also held that the duty to inform a patient about alternate modes of treating the patient's condition includes the duty to inform a patient about alternate modes of diagnosing the patient's condition.

This bill instead provides that any physician who treats a patient has a duty to inform the patient about the availability of reasonable alternate medical modes of treatment and the benefits and risks of those treatments, and provides that the "reasonable physician standard" is the standard for informing a patient under the physician informed consent law. The bill provides that the reasonable physician standard requires the disclosure only of information that a reasonable physician in

**ASSEMBLY BILL 139**

the same or a similar medical specialty would know and disclose under the circumstances. The bill also provides that the physician's duty does not require the disclosure of information about alternate medical modes of treatment for conditions that the physician does not believe the patient has at the time the physician informs the patient.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 448.30 (intro.) of the statutes is amended to read:

2           **448.30   ~~Information on alternate modes of treatment~~ Informed**  
3           **consent.** (intro.) Any physician who treats a patient shall inform the patient about  
4           the availability of all reasonable alternate, ~~viable~~ medical modes of treatment and  
5           about the benefits and risks of these treatments. The reasonable physician standard  
6           is the standard for informing a patient under this section. The reasonable physician  
7           standard requires disclosure only of information that a reasonable physician in the  
8           same or a similar medical specialty would know and disclose under the  
9           circumstances. The physician's duty to inform the patient under this section does not  
10          require disclosure of:

11           **SECTION 2.** 448.30 (1) of the statutes is repealed.

12           **SECTION 3.** 448.30 (7) of the statutes is created to read:

13           **448.30 (7)** Information about alternate medical modes of treatment for  
14           conditions that the physician does not believe the patient has at the time the  
15           physician informs the patient.

16           **SECTION 4. Initial applicability.**









State of Wisconsin  
2013 - 2014 LEGISLATURE



LRBs0038/1  
MED:sac;jm

**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO ASSEMBLY BILL 139**

April 23, 2013 – Offered by Representative WACHS.

- 1 **AN ACT** *to repeal* 448.30 (1); and *to amend* 448.30 (intro.) of the statutes;  
2 **relating to:** the duty of physicians to inform patients of treatment options.

---

***Analysis by the Legislative Reference Bureau***

Under Wisconsin’s physician informed consent law, a physician who treats a patient has a duty to inform the patient about the availability of all alternate, viable medical modes of treatment and the benefits and risks of those treatments, subject to certain exceptions. A physician who fails to so inform a patient about modes of treatment may be held civilly liable for damages under tort law. The Wisconsin Supreme Court has employed a “reasonable patient standard” to determine whether a physician has fulfilled his or her duty. Under the reasonable patient standard, a physician must disclose information necessary for a reasonable person in the patient’s position to make an intelligent decision with respect to the choices of treatment. The Wisconsin Supreme Court has also held that the duty to inform a patient about alternate modes of treating the patient’s condition includes the duty to inform a patient about alternate modes of diagnosing the patient’s condition.

This substitute amendment instead provides that any physician who treats a patient has a duty to inform the patient about the availability of reasonable alternate medical modes of treatment and the benefits and risks of those treatments, and provides that the “reasonable physician standard” is the standard for informing a patient under the physician informed consent law. The substitute amendment provides that the reasonable physician standard requires the disclosure only of





**ASSEMBLY SUBSTITUTE AMENDMENT 2,  
TO ASSEMBLY BILL 139**

May 7, 2013 – Offered by Representatives GOYKE, HEBL, WACHS, GENRICH, C. TAYLOR, BEWLEY and SARGENT.

1     **AN ACT relating to:** creating a committee to study the patient informed consent  
2             law for physicians.

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***Analysis by the Legislative Reference Bureau***

This substitute amendment creates the Committee to Study the Patient Informed Consent Law for Physicians (committee). The substitute amendment requires the committee to conduct a study of Wisconsin's patient informed consent law for physicians, to develop findings and recommendations, including any legislative proposals that the committee determines to be appropriate, and to report its findings and recommendations to the legislature.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

3             **SECTION 1. Nonstatutory provisions.**

4             (1) COMMITTEE TO STUDY THE PATIENT INFORMED CONSENT LAW FOR PHYSICIANS.

5             (a) There is created the committee to study the patient informed consent law  
6             for physicians consisting of the following members:





**ASSEMBLY SUBSTITUTE AMENDMENT 3,  
TO ASSEMBLY BILL 139**

May 8, 2013 – Offered by Representatives HEBL, WACHS, SARGENT and BARCA.

- 1 **AN ACT** *to repeal* 448.30 (1); and *to amend* 448.30 (intro.) of the statutes;  
2 **relating to:** the duty of physicians to inform patients of treatment options.

---

***Analysis by the Legislative Reference Bureau***

Under Wisconsin’s physician informed consent law, a physician who treats a patient has a duty to inform the patient about the availability of all alternate, viable medical modes of treatment and the benefits and risks of those treatments, subject to certain exceptions. A physician who fails to so inform a patient about modes of treatment may be held civilly liable for damages under tort law. The Wisconsin Supreme Court has employed a “reasonable patient standard” to determine whether a physician has fulfilled his or her duty. Under the reasonable patient standard, a physician must disclose information necessary for a reasonable person in the patient’s position to make an intelligent decision with respect to the choices of treatment. The Wisconsin Supreme Court has also held that the duty to inform a patient about alternate modes of treating the patient’s condition includes the duty to inform a patient about alternate modes of diagnosing the patient’s condition.

This substitute amendment instead provides that any physician who treats a patient has a duty to inform the patient about the availability of reasonable alternate medical modes of treatment and the benefits and risks of those treatments, and provides that the “reasonable physician standard” is the standard for informing a patient under the physician informed consent law. The substitute amendment provides that the reasonable physician standard requires the disclosure only of



**State of Wisconsin  
Department of Safety & Professional Services**

**AGENDA REQUEST FORM**

<b>1) Name and Title of Person Submitting the Request:</b>  Sheldon Wasserman		<b>2) Date When Request Submitted:</b>  <div style="border: 1px solid black; padding: 2px; font-size: small;">                     Items will be considered late if submitted after 4:30 p.m. and less than:                     <ul style="list-style-type: none"> <li>▪ 10 work days before the meeting for Medical Board</li> <li>▪ 14 work days before the meeting for all others</li> </ul> </div>	
<b>3) Name of Board, Committee, Council, Sections:</b>  Medical Examining Board			
<b>4) Meeting Date:</b>  February 20, 2013	<b>5) Attachments:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>6) How should the item be titled on the agenda page?</b>  Wisconsin State Journal Series Three Part Special Investigation of the Wisconsin Medical Examining Board's Doctor Discipline	
<b>7) Place Item in:</b> <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	<b>8) Is an appearance before the Board being scheduled? If yes, who is appearing?</b>  Jeanette Lytle, Attorney Supervisor, Division of Enforcement <span style="margin-left: 100px;">8:00 a.m.</span>	<b>9) Name of Case Advisor(s), if required:</b>	
<b>10) Describe the issue and action that should be addressed:</b>  Review and Discuss the article series, which is attached. Jeanette Lytle, Attorney Supervisor in the Division of Enforcement, will appear on behalf of the Department.			
<b>11) Authorization</b>			
Signature of person making this request		Date	
Supervisor (if required)		Date	
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## Wisconsin doctors who make mistakes often don't face serious consequences

DOCTOR DISCIPLINE: FIRST OF A THREE-PART SPECIAL INVESTIGATION



JANUARY 27, 2013 6:00 AM • DAVID WAHLBERG |  
 WISCONSIN STATE JOURNAL |  
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It was a routine procedure.

Dr. David Almasy used an electrified wire to remove abnormal tissue from the cervix of Nicole Johnston, a 35-year-old mother of four. To reduce bleeding, he injected epinephrine.

The consequences were anything but routine. Johnston's heart started racing, her

blood pressure soared and her lungs filled with fluid, causing her to suffocate and die.

During the procedure at Upland Hills Health in Dodgeville in 2010, Almasy gave her at least 100 times too much epinephrine, records show.

The Wisconsin Medical Examining Board in 2011 reprimanded Almasy, required him to take two classes and fined him \$1,200.

"He destroyed my family," said Jaimie Barnes, 18, of Madison, Johnston's daughter. "He should have had his license suspended. I'm baffled he didn't get a higher punishment to fit the crime."

But the medical board's reprimand of Almasy is typical, a State Journal analysis found. The newspaper reviewed all 218 cases leading to medical board discipline from 2010 to 2012, along with dozens of cases in which the board didn't take action.

More than half of the doctors disciplined received reprimands, warnings that go on their records but don't limit their practices.

In at least 50 of the cases involving reprimands, patients died or were harmed, leaving some to wonder why the board didn't order harsher penalties.

The board used the same discipline for doctors who wrote questionable sick notes for protesters at the state Capitol in 2011.

Medical board leaders defended their actions, saying they prefer to rehabilitate doctors rather than punish them, especially for mistakes.

But they also said limited money and authority sometimes prevent the board from taking more serious disciplinary action

"It would be nice to have revocations. It would be nice to have stronger suspensions," said Dr. Sheldon Wasserman, board chairman. "But that comes at a cost. We don't have the resources."

### **State ranks near bottom**

Wisconsin has long ranked near the bottom of states in taking serious actions against doctors, according to the consumer watchdog group Public Citizen.

In the group's latest annual report, in May, the state ranked 46th, up from 49th the previous three years.

Wisconsin's medical board ordered 1.90 serious actions per 1,000 doctors from 2009 to 2011, the latest report found. That's about a third less than top-ranked states.

Wasserman and others say Wisconsin might have better doctors than most states. But Public Citizen said there's no evidence the prevalence of doctors deserving discipline varies substantially among states.

"It's a dysfunctional process," Dan Rottier, a medical malpractice attorney from Madison, said of Wisconsin's medical board. "We tell people never to expect them to do anything."

Rottier's lawsuit against Dr. Leonard Go on behalf of Shelby Bomkamp led to a \$17.3 million settlement in 2009.

Bomkamp — of Highland, northwest of Dodgeville — suffered a permanent brain injury at age 6 during surgery to remove her spleen, according to the lawsuit and medical board records.

During the surgery in 2007 at St. Mary's Hospital in Madison, Go used a blender-like device to chop up her spleen. He accidentally cut major blood vessels and her bowel, records show.

Go, of Dean Clinic, hadn't used the device before, nor had he been trained how to use it.

The medical board reprimanded him in 2011 and fined him \$1,800. The fines are based on investigation costs.

Go declined to comment to the State Journal. In a letter to the medical board, he said he expected to "bear lifelong personal remorse" for what happened.

"I firmly believed the technique I was using in this procedure represented a safer option for the patient," he wrote.

But Rottier said the medical board's discipline wasn't enough.

"A child is permanently brain damaged, and he gets a reprimand? It's pathetic," he said.

### **Slaps on the wrist?**

Wasserman said the board's limited budget makes it hard to fight doctors willing to spend large sums to defend themselves. The board is part of the Wisconsin Department of Safety and Professional Services.

The budget was increased to \$1.8 million in 2009 through a 33 percent increase in doctor license fees.

This year, the budget is \$1.9 million. A \$1.25 million transfer of reserve funds by the state to the general fund last year reduced money available for future years, according to the Legislative Fiscal Bureau.

"There's a push to just get it done with, get the plea bargain accepted and approved, rather than sometimes a harder line," Wasserman said.

The state Supreme Court has ruled the board is supposed to protect the public, deter wrongdoing and rehabilitate doctors — but not punish them, said Dr. Gene Musser, a board member and former board chairman.

State statutes say the board should investigate complaints of unprofessional conduct but don't authorize the board to launch its own probes of suspected wrongdoing, Musser said.

Also, Wisconsin doesn't routinely do criminal background checks when doctors apply for licenses, as most states do.

But a major reason Wisconsin ranks low is the medical board's frequent use of reprimands instead of harsher penalties. Public Citizen doesn't consider reprimands to be serious discipline.

"They are slaps on the wrist," said Dr. Sidney Wolfe, director of Public Citizen's health research group. "They don't have any effect on the doctor's practice."

But Musser said when doctors are reprimanded, the state's 23,000 licensed doctors are notified through a newsletter. Prospective employers find out. So can the public, by searching the medical board's website.

"The process a physician goes through to be reprimanded really wakes them up," Musser said. "It is a gigantic event."

Almasy "showed tremendous remorse" for the epinephrine overdose that killed Johnston, Wasserman said. In a letter to the board from his attorney, Almasy said he was "devastated" by what happened. He declined to comment to the State Journal.

Formerly with Dean Clinic, Almasy lost his privileges at the Dodgeville hospital for nine months and now practices in Sterling, Ill.

He said a nurse gave him the wrong concentration of epinephrine, according to medical board records.

But the nurse, in a deposition, said Almasy confirmed the concentration and dosage before injecting the drug. A surgical tech backed up the nurse's account.

An assessment ordered by the medical board said Almasy needed to work on his listening skills.

"He will live with this for the rest of his life," Wasserman said. "That's a tremendous punishment."

Disciplining doctors, whose work often involves life or death, is different from punishing criminals, Musser said.

"We have people in general who did not mean to do bad," he said. "They are meaning to do good."

### **An unwanted hysterectomy**

Laurel Dean — of Spooner, in northwest Wisconsin — lost her ability to bear children at age 28 after Dr. Neal Melby performed an emergency hysterectomy.

Melby scheduled the surgery in 2005 at Baldwin Area Medical Center. It was needed to stop bleeding from complications of a routine procedure he had done to remove tissue from Dean's uterus, according to medical board records.

Dr. Marvin Klingler asked Melby to do the routine procedure — dilation and curettage, or D&C — after a pelvic ultrasound was "suspicious" for tissue in Dean's uterus.

But pelvic ultrasounds have a high rate of false positives in women who have recently given birth, the medical board said, and Dean had delivered her first baby seven weeks earlier.

Klingler should have considered nonsurgical options, the board said.

Klingler told the State Journal his recommendation for a D&C was reasonable, and he discussed the potential risks with Dean.

Dean's lawsuit against Melby, who works in New Richmond, led to a confidential settlement in 2008. Her lawsuit against Klingler, who worked in Baldwin until starting a new job in Hudson this year, went to trial the same year. The jury cleared him of negligence but found Melby negligent. Melby declined to comment.

In 2011, the medical board reprimanded both doctors, ordered each of them to take a class, and fined Melby \$2,400 and Klingler \$850.

Dean said she has a hard time seeing pregnant women and learning that her friends are pregnant. The emotional toll led her and her husband to divorce, she said.

She planned to have at least one more child. Her daughter is 7.

The medical board should have suspended Melby and Klingler and required them to take more classes, Dean said.

"The way it's impacted my life, I feel that it should also have an impact on their lives," she said. "I almost died."

### **Mad, sympathetic over reprimands**

Elsie Nelson, of Two Rivers, went for surgery on the right side of her spine in 2002.

But Dr. Paul Baek operated on the left side, according to medical board records and a lawsuit by Nelson that led to a confidential settlement in 2007.

In 2003, Baek, a neurosurgeon with Aurora Health Care in Green Bay, made the same mistake with another patient, according to the medical board.

The board reprimanded Baek, fined him \$2,500 for both incidents and required him to attend a two-day patient safety workshop. Baek declined to comment.

"I would yank his license for six months," said Robert Nelson, Elsie's husband.

Elsie, 83, said another doctor later operated on her right side but she still has pain.

"It makes you mad that doctors screw up more than once and the population at large doesn't know that," she said.

Roger Schwartz is more sympathetic.

In 2003, he suffered a stroke that left him permanently disabled on his left side, according to medical board records and his lawsuit against Dr. Joel Stoeckeler. The suit led to a confidential settlement in 2008.

Stoeckeler, who works in Baldwin, failed to adequately monitor Schwartz's blood thinner levels, putting him at risk for the stroke, according to the medical board.

Stoeckeler told the State Journal he didn't have access to important home health data for Schwartz, and at least six other doctors were involved. "This was a health information failure, not an individual failure," he said.

The board reprimanded Stoeckeler in 2011, fined him \$1,900 and required him to take courses in blood thinner management.

"He shouldn't have cut me off (the blood thinner drugs) like that. ... I've got to live with it," said Schwartz, 71, a resident of Wisconsin Veterans Home at King, near Waupaca.

But Schwartz said the reprimand was appropriate. "Other people think he's a good doctor," he said.

### **Epinephrine overdose**

To Jaimie Barnes, Almsy's reprimand was insufficient for her mother's epinephrine overdose.

"It's nothing," she said. "He killed my mom."

Johnston, of Barneveld, was working at Madison Family Dental Associates in April 2010 when she had an abnormal Pap smear.

She had also tested positive for HPV, putting her at greater risk for cervical cancer. After another test found abnormal tissue, Almasy recommended a loop electrosurgical excision procedure to remove it. Johnston agreed.

During the low-risk procedure, doctors usually inject epinephrine mixed with lidocaine or Marcaine, drugs that reduce pain. The concentration of epinephrine in such mixtures is 1:100,000 or 1:200,000.

Almasy asked for 20 milliliters of epinephrine to inject into Johnston.

Nurse Brenda MacKinnon asked if he wanted "just epinephrine," according to her deposition. She said she also asked if he wanted 1:1,000.

According to her, he said, "Yes. I use this in the clinic for all my cases in the clinic."

Almasy said he didn't recall MacKinnon specifying 1:1,000.

### **Education vs. accountability**

After Almasy injected the epinephrine, Johnston had a toxic reaction. She was taken to UW Hospital in Madison but could not be revived.

The state Board of Nursing didn't discipline MacKinnon after an investigation found insufficient evidence of wrongdoing.

A lawsuit against Almasy led to an \$885,000 settlement last year for Barnes and her three siblings, now ages 14, 9 and 3. The four children have three fathers, and with Johnston gone, "now we're all separated," Barnes said.

Musser, the former medical board chairman, said medical errors — especially system errors like Almasy's appeared to be — call for re-education, not harsh discipline.

Almasy had no other complaints in Wisconsin.

What happened to Johnston is "horrible," Musser said but the board looks at whether doctors endanger patients and have problematic track records, not at the severity of the outcome of a mistake, he said.

"We could all be revoked if you revoked for error," Musser said. "None of us work error free."

Madison attorney Keith Clifford, who filed the suit against Almasy, said it "shocks the conscience" that the medical board issued its least serious discipline for the most serious harm.

"It's just woefully inadequate," he said. "The health care system is almost rendered unaccountable."

— *David Wahlberg wrote this series while participating in the California Endowment Health Journalism Fellowships, a program of USC's Annenberg School for Communication and Journalism.*

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## Findings: Board issued 115 reprimands, suspended 19

The State Journal reviewed all 218 cases leading to discipline by the Wisconsin Medical Examining Board from 2010 to 2012.

The paper also inspected files for dozens of complaints to the medical board or to a separate state agency that mediates malpractice claims. It looked at lawsuits in those and other cases. Many cases didn't result in medical board discipline.

The paper's analysis found that during the three-year period, the medical board:

- Issued 115 reprimands, or warnings that go on doctors' records but don't limit their practice, while restricting the practices of 10 of those doctors and suspending one through additional action.
- Used reprimands for a wide range of problems, from poor record keeping and improper drug prescribing to missed cancer diagnoses and fatal mistakes.
- Gave reprimands in at least 15 cases in which patients died and another 36 in which they were harmed.
- Overall, revoked the licenses of five doctors, suspended 19 doctors and restricted the practices of 24 doctors. Another 30 doctors surrendered their licenses and 11 retired around the time they were being investigated.

## Some doctors not disciplined, even following large malpractice settlements

DOCTOR DISCIPLINE: SECOND OF A THREE-PART SPECIAL INVESTIGATION



JANUARY 28, 2013 5:00 AM • DAVID WAHLBERG |  
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Every three hours, even at night, Ken Plants dials up his morphine pump and rocks on his therapy ball.

Back and leg pain on his right side came from a work injury, he said. But similar pain on his left side came from surgery by Dr. Cully White, according to a lawsuit settled in 2009 for \$2.9 million.

White was supposed to operate on the right side of Plants' spine in 2004. But he did the procedure on the left side, according to the lawsuit and a complaint before the Wisconsin Medical Examining Board.

Yet, nine years after the surgery and four years after the medical board was notified about the settlement, the board has taken no action against White, who works in Milwaukee.

White is one of at least 21 doctors in Wisconsin who settled malpractice lawsuits for large sums or were found negligent by juries, from 2007 to 2011, who have not been disciplined by the medical board, a State Journal analysis found.

White's case remains open, but most of the other cases are closed.

Plants, 56, a former carpenter from Bristol, near Kenosha, said his pain has kept him from working, hunting, fishing and playing with his children and grandchildren.

He and his attorney were so motivated to have the medical board discipline White that they took an usual step in 2010: filing a court petition seeking action. A judge dismissed it.

"To see him still practicing just kills me," Plants said. "I accept human error, but you've got to admit it."

White declined to comment, other than to say through a spokeswoman that he's cooperating with the medical board's investigation.

In 2009, a jury found Dr. Lorraine Novich-Welter negligent for causing brain damage to Dan Nelson in 2000. She had trouble clearing a clog in his tracheotomy tube at Froedtert Hospital in Milwaukee, depriving him of oxygen, according to medical board records.

The jury awarded \$2.1 million to Nelson, who lives east of Lake Geneva, but the case was later settled without a judgment against Novich-Welter.

In 2011, the medical board decided not to discipline her because she was a resident, or doctor-in-training, at the time of the incident and had no other complaints. She works in Utah and declined to comment.

"I think she should definitely be censured in some form," said Nelson's mother, Jean Nelson. "The judgment of a doctor is essential in a crisis situation."

### **Negligence but no discipline**

Dr. Gene Musser, a medical board member and former board chairman, said the board handles complaints against doctors differently than courts do.

In court, lawyers must show that negligence caused damage with financial implications, he said.

"In our rule, you have to prove that the action created a danger to the patient, and that's it," Musser said. "The outcome is irrelevant."

Autumn Worden was born in 2002 with cerebral palsy and other permanent brain injuries. During her delivery by Dr. Debra Stockwell at Saint Mary's Hospital in Rhinelander, she suffered from a lack of oxygen, according to medical board records.

Fetal heart monitoring showed signs of distress, but Stockwell left the room to do another delivery, the records show. By the time she returned about 40 minutes later, the situation had become worse. She called for an emergency cesarean section but it wasn't done for another hour.

During a trial in 2008, Worden's mother, Nancy, said her daughter, then 6, couldn't crawl, walk, speak or feed herself and would always wear diapers.

The jury found Stockwell negligent and awarded \$4.6 million. An appeal led to a \$4.5 million settlement last year.

In 2011, the medical board decided not to discipline Stockwell, in part because her license expired in 2005. The board sometimes acts in such situations, however. Stockwell, whose last known address was in California, couldn't be reached for comment.

Daniel Tomas, of the Iowa County village of Plain, died four days after Dr. Theodore Parins removed his appendix at Sauk Prairie Memorial Hospital in 2003. Tomas was 45.

An autopsy found torn abdominal tissue and bleeding, apparently from the surgery, according to a complaint filed with the state's Medical Mediation Panel.

In 2009, a jury found Parins negligent and awarded \$1.7 million to Tomas' wife, Doris. An appeal led to a confidential settlement.

In a statement to the State Journal, Parins said the autopsy was incomplete. Tomas likely died from a complication of his appendicitis, not from the surgery, he said.

At discharge, Parins said, he told Tomas to return to the hospital if he had increased pain. But Tomas didn't, despite having bad chest pain the day before he died.

The medical board took no action against Parins. Jury awards and settlements are supposed to automatically generate complaints to the board, but a spokeswoman said the board never received a complaint against Parins.

Sarah Jewell, of Mineral Point, had neck surgery at St. Mary's Hospital in Madison in 2005 on bone spurs that were causing neck, shoulder and arm pain.

She woke up paralyzed on her left side from a spinal cord injury, according to a Medical Mediation Panel complaint. Her lawsuit against Dr. Todd Trier, who performed the surgery, led to a confidential settlement in 2009.

In 2007, Trier operated at St. Mary's on Dennes McCartney, 52, of Linden, northwest of Mineral Point.

Trier was supposed to remove an infected shunt in McCartney's brain. The device had been placed years earlier when McCartney had a tumor removed.

During the surgery to remove the shunt, the device broke and Trier left part of it in, according to a Medical Mediation Panel complaint. A piece removed tested positive for staph bacteria.

Pus started draining from McCartney's inflamed neck. Eventually another doctor operated and found a two-inch fragment of the shunt. After the doctor removed it, McCartney's neck wound healed.

McCartney's lawsuit against Trier in 2011 led to a confidential settlement last year. Trier's shunt removal "conformed with the standard of care," according to a statement by his attorney.

The medical board hasn't disciplined Trier for the Jewell or McCartney cases. The board spokeswoman said the board didn't receive complaints in either case.

In June, Dean Clinic announced that Trier had stopped working there at a neurosurgeon. He couldn't be reached for comment.

### **No pulse for 11 minutes**

Nelson, who won the jury verdict against Novich-Welter, was in a motorcycle accident in 2000. He broke several bones and suffered a traumatic brain injury. He wasn't wearing a helmet.

He was taken to Froedtert, where he had several surgeries before going to the hospital's rehab unit.

On his first morning in rehab, a nurse saw that his tracheotomy tube was clogged, according to medical board records. She called for Novich-Welter, who was unable to clear it. Though a replacement tube was on the wall, Novich-Welter didn't try to change it, records show.

By the time an emergency team removed the clog and revived Nelson, he had gone without a pulse for 11 minutes, according to a Medical Mediation Panel complaint filed by his attorney.

The lack of oxygen caused an additional, permanent brain injury, the complaint says. Also, a condition in which bone develops in soft tissue allegedly was made worse because medications were stopped while he recovered.

"It definitely caused me to be in this wheelchair," said Nelson, 52, who lives in New Munster, between Lake Geneva and Kenosha.

Nelson said he had started walking, with assistance, when he got to rehab.

Though Nelson is not paralyzed, the bone condition — called heterotopic ossification — makes him unable to walk, he and his mother said. His speech is slurred, and his mental capacity is reduced. Home health aides assist him.

Before the accident and the tracheotomy clog, Nelson owned a restaurant in northern Illinois. He and his now ex-wife, who have two children, were runners.

Jean Nelson said the medical board should have at least reprimanded Novich-Welter "so this is on her permanent record."

Dan Nelson said the doctor learned a lesson, even without medical board discipline. "Unfortunately, I paid for it," he said.

### **Wrong-side surgery**

Plants said his pain gets worse throughout each day, though his morphine pump provides some relief.

He can't sleep more than a couple of hours at a time, he said. It's hard for him to sit on a chair or a couch for long. He curls over his therapy ball and rarely leaves the house.

"We don't socialize with people anymore," he said.

He started receiving disability payments in 2006 but also applied unsuccessfully for dozens for jobs, he said.

After White's operation, Plants had three spine surgeries by two other doctors. Those procedures didn't ease his pain much, he said. It's not clear why.

His right leg and lower back initially started hurting after he lifted a heavy bucket at work in July 2003, he said.

White operated in February 2004.

"When I woke up, both legs were bad," Plants said.

An MRI showed that White did the procedure on the left side, according to the complaint against White before the medical board. A doctor who later operated on Plants also said White hadn't operated on the right side.

After the surgery, when Plants told White about his left-side pain, White said it was from how he had been positioned on the operating table, the complaint says. White sent Plants for physical therapy.

In a statement by his attorney, White said the surgery didn't cause Plants any harm.

Plants said he could have received more money from White if he had agreed to keep his settlement confidential. But he wants others to know what happened.

"For him to sit there and lie to me, that's not acceptable at all," he said.

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## Case study: Reprimand didn't end Dr. Victoria Mondloch's problems



JANUARY 28, 2013 7:00 AM • DAVID WAHLBERG |  
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Dr. Victoria Mondloch tried to deliver twins vaginally in 2002 despite signs of distress, records show.

The first twin had significant brain injuries. The second was stillborn.

Hospital officials said Mondloch, an obstetrician/gynecologist from Waukesha, should have done a cesarean section, according to the Wisconsin Medical

### Examining Board.

She also cut another baby's head during delivery, according to medical board records. In another case, she stripped a woman's membranes to induce labor and sent her home, where her uterus ruptured and the baby died.

The medical board reprimanded Mondloch for the incidents in 2004. It also fined her \$2,000 and ordered her to finish a year-long education program she had started.

Nine months later, the board cleared her license. But the problems didn't end, raising questions about the board's ability to protect the public while trying to rehabilitate doctors.

In 2008, Waukesha Memorial Hospital investigated 23 of Mondloch's patient records from 2005 to 2008 for concerns including inadequate medical skills and poor quality of care. She surrendered her privileges at the hospital in 2009.

Problems with Mondloch's treatment of five patients from 2004 to 2010 led the medical board last year to order her to stop all obstetrics work while the board continues to investigate.

According to a complaint before the medical board, Mondloch:

- Missed an ectopic pregnancy after the patient saw her several times in a month. The patient eventually went to the emergency room, where doctors discovered a ruptured ectopic pregnancy and had to remove her right fallopian tube.
- Misdiagnosed a molar pregnancy — when tissue that normally becomes a fetus becomes an abnormal growth — and gave the patient the wrong drug for depletion of her red blood cells.

- Misdiagnosed polycystic ovarian disease in two patients and performed ovarian drilling, surgery that doesn't help the condition. The procedure can help with related infertility but should only be used after medications have been tried.
- Prescribed drugs that contributed to a patient's rebound headaches and dependency. In addition, Mondloch did a hysterectomy on the patient without first attempting non-surgical treatments. She also failed to properly manage bleeding during the hysterectomy.

The complaint doesn't say how the five patients fared. But Mondloch told the State Journal that, other than the patient whose fallopian tube was removed, the patients were pleased with the care she provided. Three of them remain her patients, she said.

The hysterectomy patient's bleeding was from a platelet disorder not identified until after the surgery, Mondloch said.

She said her care complies with American College of Obstetricians and Gynecologists guidelines.

The ban on Mondloch's obstetrics work, issued in January 2012, will continue until the board takes final action. She can still do routine exams, check-ups and tests such as Pap smears. She runs an independent clinic in Waukesha.

Dr. Sheldon Wasserman, chairman of the medical board, said the board ordered Mondloch to complete a mini-residency in 2004 and her mentors said she showed progress.

The obstetrics ban last year should further protect the public, said Wasserman, also an OB/GYN.

"OB/GYN is where she's dangerous," he said. "We're taking that away from her."

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## Medical Board says lack of money, authority ties hands and may attract subpar physicians to state

DOCTOR DISCIPLINE: THIRD OF A THREE-PART SPECIAL INVESTIGATION



JANUARY 29, 2013 5:00 AM • DAVID WAHLBERG |  
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After the Wisconsin Medical Examining Board suspended Dr. Frank Salvi in 2009 for fondling four female patients, the Madison-area doctor won a circuit court ruling throwing out the sanction.

Then, the medical board won an appeals court decision restoring it. Salvi failed to get the state Supreme Court to take the case.

But he succeeded in making the medical board spend about \$200,000 to fight him, said Dr. Sheldon Wasserman, board chairman.

The board, which has a \$1.9 million annual budget and gets about 500 complaints against doctors each year, can't afford to do that very often, Wasserman said.

"We're using up our resources fighting their resources," he said.

The budget for Wisconsin's medical board appears to be smaller than for boards in other states. It's one of several factors that limit the board, its leaders say.

The board has supported bills to remove other limitations, such as a lack of authority to launch investigations on its own or to perform criminal background checks on doctors applying for licenses.

But the state Legislature didn't pass the measures. "I think that would expand their authority too far," said state Sen. Leah Vukmir, R-Wauwatosa, chairwoman of the Senate Committee on Health and Human Services, who opposed both moves.

Other changes have been approved, such as requiring doctors to report wrongdoing by others. That started in 2009.

The board doesn't have independent authority. As part of the state Department of Safety and Professional Services, it works within departmental rules as well as state statutes and Supreme Court rulings, said Gene Musser, a board member and previous chairman.

The department, for example, hires and fires board staff.

Despite the limitations, the medical board and the department protect the public by ensuring that doctors provide safe and competent care, said Greg Gasper, the department's executive assistant. Reforms have led to a 36 percent reduction in pending cases over the past two years, Gasper said.

"Better management has resulted in more disciplinary action and reduced pending caseloads," he said.

Musser acknowledged that a major reason Wisconsin ranks low in serious discipline against doctors is the board's preference for reprimands instead of more serious penalties in many cases.

Even if the board had more money or more power, its frequent use of reprimands likely would continue because the board generally values rehabilitation over harsh discipline, he said.

### **"Our wings are clipped"**

In 2009, amid criticism that the medical board took too long to discipline doctors, Wisconsin raised the biennial license fee for doctors from \$106 to \$141 — an amount still lower than in most states.

That paid for more investigators and increased the board's budget to \$1.8 million that year. This year, it's \$1.9 million.

But while the board had a team of 10.5 attorneys, paralegals and investigators in 2010, a reorganization reduced the team to 7.7 positions, officials said.

"Our wings are clipped again," Wasserman said.

The board's total staff is about 14 positions, department officials said, but some of those people also work for other boards.

Wasserman said the board's limited resources mean the board must be cautious in taking a hard line against doctors such as Salvi, who worked at UW Hospital until resigning in 2007.

The result is more plea bargaining for lesser forms of discipline, Wasserman said.

Salvi, of Cottage Grove, denied the charges against him. His license remains suspended and he is looking for work, said his attorney, Lester Pines. Salvi declined to comment.

### **More resources in other states**

No state-by-state comparison of medical board budgets is available, but medical boards in some states are better funded than in Wisconsin.

The State Medical Board of Ohio has a \$9.1 million budget and the equivalent of 79 full-time staff. Though Ohio has twice as many doctors as Wisconsin, its medical board budget is nearly five times greater.

Ohio was among the top three states for serious discipline against doctors in Public Citizen reports the past two years.

The medical board in Ohio is a separate agency, not part of a state department, said Joan Wehrle, the board's outreach manager.

"It makes a huge difference," Wehrle said. "You set the priorities."

Ohio's board developed guidelines that suggest minimum and maximum penalties for various violations. Wisconsin's board has no such guidelines.

From 2009 to 2011, the Ohio board revoked the licenses of 118 doctors and issued 20 reprimands. Wisconsin's board issued five revocations and 115 reprimands during that time.

"If there's patient harm, the board will usually issue a stronger sanction than a reprimand," Wehrle said.

The State Journal contacted medical boards in four states with populations and doctor numbers similar to Wisconsin's.

Their budgets: Colorado, \$2.9 million; Minnesota, \$5.3 million; Missouri, \$2.6 million; and Tennessee, \$2 million.

### **Legislature says no**

Wisconsin statutes say the medical board should investigate complaints of unprofessional conduct against doctors, but they don't say the board can look into suspected wrongdoing on its own.

A 2003 bill to change some medical board operations, including allowing proactive investigations, wasn't approved by the state Legislature. The Federation of State Medical Boards doesn't track how many states do such investigations.

Musser said proactive probes could lead to more discipline.

"I believe there are physicians around the state doing stuff they shouldn't be doing that we don't hear about because it doesn't get reported to us," he said.

Likewise, requiring background checks when doctors apply for licenses could identify more doctors with criminal pasts, Musser said.

Medical boards in 36 states require background checks, according to the Federation of State Medical Boards. The Wisconsin board's attempt to do so last year was overruled by the Legislature.

Rep. Erik Severson, R-Star Prairie, co-sponsored the bill that prevented the board from doing routine criminal background checks.

Severson, a doctor, said requiring fingerprints for the background checks would be costly.

"They'd be adding an extra burden on physicians who want to come here to Wisconsin at a time when we have a physician shortage," he said. "It seems like an overreach on government's part to solve a problem that doesn't exist."

But by not doing the checks, Wisconsin could eventually attract doctors with criminal records, Musser said.

"As more states do that, we may become sort of a magnet," he said.

The Legislature approved a "duty to report" requirement in 2009. Doctors must report other doctors who engage in unprofessional conduct or endanger patients.

Wasserman said the requirement has led to more complaints and discipline, though a board spokeswoman said no data are available on the impact of the requirement.

### **More changes**

Last year, the board revised the state's administrative rule defining unprofessional conduct for doctors. The changes are subject to approval this year by the Legislature and the governor.

The board specified wrong-site surgery as unprofessional conduct, for example. It also listed specific crimes, such as sexual assault and child enticement. That should bring quicker action in such cases, Wasserman said.

But some proposed changes weren't adopted by the board, largely because they were opposed by the Wisconsin Medical Society and the Wisconsin Hospital Association.

One would have required doctors to tell patients about alternative diagnoses and treatments. Another would have made doctors tell the board about actions taken against their hospital privileges.

"That was a battle I could not win," said Wasserman, a former Democratic state Assembly member from Milwaukee.

Wasserman and Musser said they hope the board will make other changes. One is to require more continuing education when doctors renew their licenses every two years. Currently, 30 hours are required.

They also want doctors to complete three years of training after medical school before qualifying for a license in Wisconsin.

Most states require one year for graduates of U.S. medical schools but two or three years for graduates of foreign schools. Wisconsin requires one year for both.

"We are basically the dumping ground for a lot of bad physicians who want to get their foot in the American medical system," Wasserman said.

— *David Wahlberg wrote this series while participating in the California Endowment Health Journalism Fellowships, a program of USC's Annenberg School for Communication and Journalism.*

## **Doctor Discipline three-part special report**

**Sunday:** Wisconsin rarely suspends or revokes medical licenses, leading some to question if the state does enough to ensure patient safety.

**Monday:** Even in cases where a jury gives the patient a large award, the state may not take any disciplinary action against the doctor.

**Tuesday:** Wisconsin Medical Board members say they'd like to be tougher on doctors but don't have the authority or money to do so.

## **State's online info lacking**

Many states provide more information about doctors on their websites than Wisconsin does, according to the Federation of State Medical Boards.

In 18 states, online doctor profiles include malpractice findings, the federation says. In 16 states, criminal convictions are available. Hospital actions, such as a loss of privileges, are mentioned in 11 states.

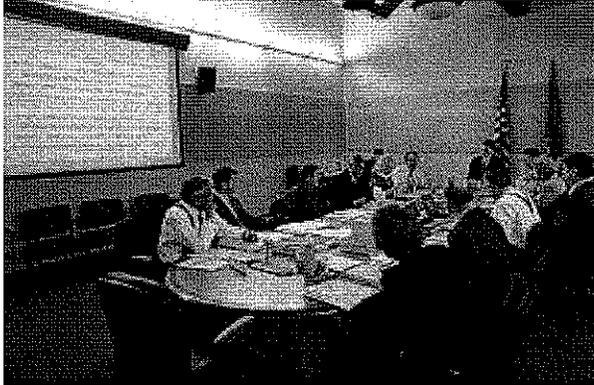
Wisconsin doesn't include any of those. The federation says all states should.

## **Search for yourself**

To check if any doctor has ever been disciplined by the medical board and read about those cases:

1. Go to [go.madison.com/doctors](http://go.madison.com/doctors).
2. Under profession, select medicine and surgery.
3. Enter a doctor's name and click search.
4. Click on the doctor's name.
5. Click on orders. If any appear, click to read them. If none appear, the doctor hasn't been disciplined.

## How the Wisconsin Medical Examining Board handles complaints about doctors



JANUARY 29, 2013 5:00 AM • DAVID WAHLBERG |  
WISCONSIN STATE JOURNAL |  
DWAHLBERG@MADISON.COM | 608-252-6125

The state Department of Safety and Professional Services receives about 500 complaints against Wisconsin doctors each year.

Half are from patients or family members. Some are from health care workers. Others are malpractice findings or hospital actions reported through a national data bank.

State investigators request medical records and ask doctors for a response.

A screening panel of the Wisconsin Medical Examining Board reviews cases each month. The panel closes about two-thirds of the cases, generally because the complaints are minor or can't be proven, said Dr. Gene Musser, a board member and former chairman.

For the other cases, formal investigations are launched. An investigator, attorney and lead board member gather more information and decide if the doctor should be disciplined and how. The full board has the final say.

Options are an administrative warning (which doesn't count as official discipline), required education, a reprimand, a license limitation, a suspension or a revocation. Many times a combination is used, such as a reprimand plus required education.

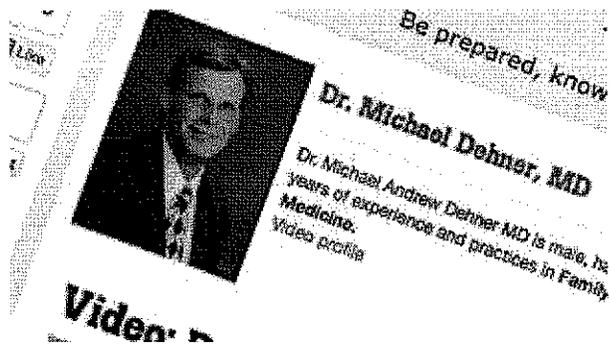
The board attorney generally negotiates with the doctor's attorney until they reach an agreement.

But sometimes doctors request a hearing before an administrative law judge. The judge recommends a type of discipline, which the board can adopt or not.

Doctors can appeal through the state court system.

## Case study: Dr. Michael Dehner's career in state plagued by mistakes, lawsuit, deaths

CASE STUDY: DR. MICHAEL DEHNER



JANUARY 26, 2013 2:00 PM • DAVID WAHLBERG |  
WISCONSIN STATE JOURNAL |  
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Dr. Michael Dehner's career in Wisconsin started on a sour note in 1999, with a restricted license because of drug prescription problems.

It ended with a finding in 2011 that his medical knowledge was "superficial."

In between, a death, a stillbirth and a misdiagnosis led the Wisconsin Medical Examining Board to discipline Dehner three times for substandard care.

The board expressed concern about another death but took no action. It hasn't investigated an additional death settled out of court last year.

Dehner's time in Wisconsin shows how the board's authority to investigate in reaction to complaints, but not launch its own inquiries, can lead the board to clear doctors after one mishap without knowing other problems have occurred.

The board reprimanded Dehner and limited his practice but never suspended him. He worked in Boscobel before moving in late 2010 to Storm Lake, Iowa, where he worked at a community health center until October 2012.

He declined to comment to the State Journal.

"When you get disciplined, you get slapped on the hand and get to continue to practice," said attorney John Cates of Madison.

Cates sued on behalf of the family of 9-year-old Andrew Chase, of Fennimore, who died from diabetic ketoacidosis in 2008. The suit led to a confidential settlement last year.

Andrew slipped into a diabetic coma at the hospital in Boscobel, but Dehner didn't transfer him to UW Hospital until the next day, according to the lawsuit. The boy died two weeks later.

"It was pretty gross mismanagement," Cates said.

Malpractice settlements are supposed to generate complaints to the medical board, but a board spokeswoman said the board hasn't received a complaint in the Chase case; she couldn't explain why. Dehner's license in Wisconsin expired in October 2011.

Kent Nebel, legal affairs director of the Iowa Board of Medicine, said he couldn't say if that board has been notified of the case.

According to medical board documents:

- In 1999, the board issued Dehner's license, immediately restricting it because he had over-prescribed controlled substances to patients in Iowa. The Wisconsin board ordered Dehner to undergo drug screening four times a month. In 2001, it reduced the requirement to twice a month. In 2004, it removed all restrictions from his license.
- A week before the board reduced the drug screenings in 2001, Dehner failed to decompress the stomach of an 88-year-old woman with a bowel obstruction. He gave her a drug that could make her obstruction worse. She died the same day. The board reprimanded Dehner in 2006, fined him \$4,000 and required him to take a gastroenterology review course. Three months later, the board acknowledged he had taken the course.
- In 2006, two weeks after he took the course and a month before the board's acknowledgment, Dehner diagnosed a 94-year-old man with a viral gastrointestinal illness even though an X-ray showed a bowel obstruction, according to a radiologist.

The man died two weeks later. "Dehner is a problem," Dr. Suhatha Kailas, a board member investigating the incident, wrote in 2007.

"I think Dehner missed a small bowel obstruction. What worries me about him is the fact that he had just been disciplined for similar issues just a few months prior." But the board took no action in the new case, saying there was insufficient evidence of a violation.

- In 2008, the board restricted Dehner's license for a stillbirth and fined him \$12,548. The stillbirth happened in 2004, six weeks after the board removed all restrictions from his initial license. He failed to recognize placental abruption, when the placenta peels away from the wall of the uterus. He also gave the laboring mother two drugs too closely together and administered fentanyl, which can worsen fetal distress.

The board required Dehner to take obstetrics courses, be mentored by an obstetrician, have his obstetrics charts reviewed and refrain from deliveries unless another doctor was present.

- In 2010, the board investigated an incident from 2008 — which happened in the weeks just before the discipline for the stillbirth — in which Dehner repeatedly misdiagnosed a young woman's gallstones as constipation. She eventually went to a doctor in La Crosse who promptly removed her gallbladder and gallstones.

The board ordered Dehner to undergo an assessment at UW School of Medicine and Public Health. A report in 2011 found that he "demonstrated a number of deficiencies as a physician ... It was felt that (Dehner's) medical knowledge was superficial and lacking in detail."

- In 2012, in response to the missed gallstones, the board fined Dehner \$1,650 and required him to take classes in record keeping and family medicine, and have some

charts reviewed. The Iowa Board of Medicine followed up by placing Dehner on probation for five years. About the same time, he stopped working at the clinic in Storm Lake.

He is working as a fill-in emergency medicine doctor, though it's not clear where, said Brad Meyer, who runs the Storm Lake clinic. Nebel said the Iowa board doesn't know where Dehner is working.

## Other cases where patients were seriously harmed but doctors were only reprimanded

JANUARY 26, 2013 2:00 PM • DAVID WAHLBERG | WISCONSIN STATE JOURNAL |  
DWAHLBERG@MADISON.COM | 608-252-6125

*Here are summaries of five other cases in which patients died or were seriously harmed and their doctors received reprimands from 2010 to 2012, based on court and Wisconsin Medical Examining Board records:*

Sherry Bartz, of Edgerton, died in 2008 at age 58 from blood clots in her lung after battling an infection in her abdomen from hernia surgery a month earlier. **Dr. Mark McDade** did the surgery at Mercy Hospital in Janesville.

Bartz had a sinus infection before the elective surgery, so McDade should have postponed the procedure, the medical board said. In addition, McDade didn't properly treat Bartz's post-surgery infection, the board said.

A lawsuit by Jeff Bartz, Sherry's husband, led to a confidential settlement in 2011. McDade declined to comment.

Last year, the board reprimanded McDade, who works at Dean Clinic in Janesville, and fined him \$2,050. He had already attended a conference on abdominal wall surgeries.

Laron Birmingham was born at St. Joseph Regional Medical Center in Milwaukee in 2005 with cerebral palsy and other neurological problems. **Dr. Donald Baccus** used two kinds of forceps and a vacuum in the delivery. In 2010, a jury found negligence and awarded the family \$23.3 million.

Baccus should have done a cesarean section, the medical board said. The board reprimanded him in 2012 and fined him \$3,850. He had already stopped doing obstetrics and retired in June.

Baccus told the State Journal he delivered about 5,000 babies over 25 years and was sued only two other times; both of those cases were dismissed early on.

He noted that defense witnesses said the problems with Laron Birmingham's brain were not the result of Baccus' actions.

Cara and Vince Dreyer's first baby was stillborn in 2008 at Westfields Hospital in New Richmond. **Dr. Susan Frazier** misread the fetal monitoring strip, leading to a delayed cesarean section delivery, the medical board said.

The Dreyers' lawsuit against Frazier led to a confidential settlement in 2011. The board reprimanded Frazier in 2012 and fined her \$275. She now works in Rib Lake, northwest of Wausau.

She told the board she stopped doing obstetrics. She declined to comment, other than to confirm that she isn't delivering babies.

Elizabeth Ferris, of Marshfield, was 37 weeks pregnant with her third child when she went to the emergency room at St. Joseph's Hospital in Marshfield at 4:40 a.m. one day in 2005. She was worried her fetus wasn't moving enough.

Fetal heart monitoring suggested distress, but **Dr. Katherine Kaplan** discharged Ferris at 6:30 a.m. She told her to return for her scheduled appointment with her regular doctor at 10 a.m.

At that appointment, an ultrasound showed the fetus had died. Ferris' lawsuit against Kaplan, who still is with Marshfield Clinic, led to a confidential settlement in 2009. Kaplan declined to comment.

The medical board reprimanded Kaplan in 2011 and fined her \$1,000. She had already taken fetal monitoring courses ordered by North Carolina's medical board.

Patricia Jungwirth, of Oshkosh, died from a bowel obstruction in 2008, five days after pelvic reconstruction surgery. The day before she died, she saw **Dr. Megan Landauer** for a bloated stomach at Aurora Medical Center in Oshkosh.

"I see no reason to think she has a bowel obstruction," Landauer wrote.

Landauer told Jungwirth to take milk of magnesia and come back the next day. She should have considered Jungwirth's symptoms to be a potential emergency, the medical board said. A lawsuit led to a confidential settlement in 2010.

The board reprimanded Landauer in 2011 and fined her \$958. She had already taken 50 hours of continuing education.

Landauer, who declined to comment, now works at Marshfield Clinic in Minocqua and Park Falls.

## Five doctors lost licenses over crimes, drugs

JANUARY 26, 2013 2:00 PM • DAVID WAHLBERG | WISCONSIN STATE JOURNAL |  
DWAHLBERG@MADISON.COM | 608-252-6125

Murder, child pornography and improper prescribing of pain medications are among the reasons the Wisconsin Medical Examining Board revoked the licenses of five doctors from 2010 to 2012.

None of the doctors could be reached for comment. Summaries of their cases, according to board documents:

- **Gerhard Witte, 2010:** Witte, of Milwaukee, was convicted of first-degree intentional homicide in 2010 for killing his former wife, a musician with the Milwaukee Symphony Chorus. He stabbed her and slit her throat in 2008 as she walked to her car after a performance. Witte, who practiced internal medicine, was sentenced to life in prison without parole.
- **Eric Schwietering, 2011:** Schwietering, of Milwaukee, pleaded guilty to two counts of possession of child pornography in 2007. Three years later, the child psychiatrist was convicted of fourth degree sexual assault and exposing his genitals to a child. He now lives in Ohio, according to Wisconsin's sex offender registry.
- **William Braunstein, 2011:** Braunstein, of St. Louis Park, Minn., told the state of Minnesota that he had depression and possible attention deficit disorder and obsessive compulsive disorder. After the internal medicine doctor failed to attend therapy sessions and cooperate with the Minnesota Board of Medical Practice, that board threatened to suspend his license. That prompted the Wisconsin medical board to investigate. After he failed to cooperate, the board revoked his Wisconsin license. Then the Minnesota board suspended his license there.
- **Steven Greenman, 2011:** Greenman, of Milwaukee, prescribed controlled substances "indiscriminately" to six patients over five years, despite signs of drug abuse, addiction and diversion. He also directed the patients to multiple pharmacies. When one patient called him prior to reporting to jail, she asked for more pain medications as a "last hurrah" and he complied.
- **Mark Fantauzzi, 2012:** Fantauzzi, of Circleville, Ohio, had his license revoked by the State Medical Board of Ohio after surrendering his controlled substances privileges with the federal Drug Enforcement Administration. The DEA said the anesthesiologist prescribed controlled substances outside of the usual course of professional practice, causing a patient's fatal overdose. The Wisconsin board followed up on the Ohio board's action.

## Medical Examining Board lacks backbone, funding

JANUARY 30, 2013 5:00 AM • WISCONSIN STATE JOURNAL EDITORIAL

We all make mistakes.

But when doctors mess up, the consequences can maim and kill.

That's why doctors require so much education and earn so much respect and money.

It's also why doctors must be held accountable — especially for flagrant and repeated errors — to protect the public from further harm.

The Wisconsin Medical Examining Board needs to do a better job of disciplining the worst doctors. The State Journal's three-day series this week, "Doctor Discipline," made that painfully clear.

The board needs to show more backbone. And the Legislature needs to stop raiding the doctor fees that are supposed to fund the board's vital oversight of medical professionals.

The State Journal investigation by medical reporter David Wahlberg found that most doctors disciplined by the state medical board in recent years received reprimands, which are warnings that go on their records but don't limit their practices. That's true even in many of the cases where patients died or were harmed.

As a result, the state ranks near the bottom nationally for the strength of its disciplinary actions.

Consider, for example, just one of the many (and simplest) example's in the newspaper series: The Wisconsin doctor who operated on the left side of a woman's spine instead of on the right side where he was supposed to. That same doctor did the same thing a year later to another patient — only to receive a reprimand from the board (with a token fine of \$2,500, based on investigation costs, and a two-day patient safety workshop).

Repeatedly screwing up in such a profound way in such a short span of time demands a stiffer penalty than that, such as a license suspension. A reprimand should be used for lesser cases of poor judgment, such as the doctors who wrote bogus sick notes to protesters at the state Capitol in 2011.

Yes, badly harmed patients often settle out of court for undisclosed amounts of money. But the issue here is whether the state suspends or revokes doctors' licenses to deter future harm.

Too often, the state medical board is settling for slaps on the wrist. That needs to change, with more aggressive actions, better funding and authority.

## Hands on Wisconsin: Slap on the wrist



JANUARY 30, 2013 5:00 AM • PHIL HANDS |  
WISCONSIN STATE JOURNAL |  
PHANDS@MADISON.COM

The recent Wisconsin State Journal investigation on disciplining doctors was eye-opening. Our Medical Examining Board rarely cracks down on doctors who make mistakes. Often the board lacks the funding and man-power to conduct thorough investigations that would lead to more than reprimands for doctors who through carelessness or simple poor judgment dramatically damage their patients.

That needs to change. Doctors have a great responsibility to keep their patients safe, and those who mess up, should face serious consequences. Those who repeatedly mess up should lose their licenses.

I doubt Wisconsin has doctors as incompetent as *The Simpsons* character, Dr. Nick Riviera, who is depicted in this cartoon. The vast majority of Wisconsin's physicians are professional life-savers. They deserve our respect and our praise.

Mistakes in the medical profession are rare, because most doctors are exceptionally careful and safe practitioners. But when mistakes are made the results can be dire. The consequences for those mistakes should also be.

### Phil Hands



Phil Hands blogs about his funny and fierce political cartoons for the State Journal. In his spare time, Hands enjoys eating cheese, drinking coffee and being cold.

Video: See how Hands creates a cartoon

Follow @PhilHands

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## **Skip Virchow: How can board dismiss patient's pain, costs?**

JANUARY 30, 2013 4:00 AM

In the series on doctor discipline, an interesting comment was made by Dr. Gene Musser of the Wisconsin Medical Examining Board about the criteria used by the board as compared to criteria used by a civil court.

He said that in court, lawyers must show negligence caused damage with financial implications. But in the medical review they only have to prove the action created a danger to the patient and that's it. He stated: "The outcome is irrelevant."

The medical review board appears to ignore the financial implications the negligence has caused to the patient.

I cannot comprehend that, when a person who has suffered from negligence at the hands of a doctor and will spend the rest of his life suffering both physical and financial problems, it's of no consequence to the board.

— *Skip Virchow, Marshall*



## **Marla Maeder: Medical board case of fox guarding henhouse**

FEBRUARY 01, 2013 4:00 AM

Thanks for your excellent series on doctor discipline. Our state's Medical Examining Board, made up of 13 governor-appointed members, including 10 doctors, appears to be a case of the fox guarding the hen house and the medical lobby ruling the roost.

The board's toothless reprimands for serious, sometimes fatal, mistakes are shocking.

We pay a high price for health care in this country. Wisconsin's doctor oversight board should do a better job of making sure we don't pay with our lives.

- *Marla Maeder, Madison*



## **Dr. Nicholas Hartog: Simplistic to blame just doctor, not medical team**

FEBRUARY 01, 2013 4:00 AM

Doctors are part of and often the leader of the medical team. However, when a mistake happens, the whole team and the system made an error, not any particular individual.

It is important to remember everyone involved in the medical system is human. In this regard, it is correct for the state medical board to focus on education and quality improvement rather than punishment.

When a medical mistake happens, it is imperative to do a root cause analysis, in which individuals from different specialties study the course of events to determine what happened. Medical errors are the result of smaller mistakes, oversights, and/or systems errors. Rarely can a mistake be pinned on one person or one system error.

While doctors are an integral part of the multidisciplinary team that cares for patients, to imply they are the sole reason for medical errors is a simplistic and arrogant view.

*- Dr. Nicholas Hartog, University of Iowa Hospitals and Clinics*

**THE STATE MEDICAL BOARD OF OHIO  
DISCIPLINARY GUIDELINES**

**(Revised December 2011)**

Disciplinary Guidelines are primarily for the Board's reference and guidance. They are subject to revision at the Board's discretion without notice to the public. Disciplinary Guidelines are intended to promote consistency in Board-imposed sanctions, but are not binding on the Board. The Board recognizes that individual matters present unique sets of circumstances which merit individual consideration by the Board.

## CATEGORIES OF VIOLATIONS

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## APPENDICES

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**CATEGORY I: IMPROPER PRESCRIBING, DISPENSING, OR ADMINISTERING  
OF DRUGS**

- A. Prescribing, dispensing, or administering of any drug for excessive periods of time and/or in excessive amounts.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Definite suspension, min. 90 days; subsequent probation, min. 2 years, to include prescribing course

- B. (Reserved)

- C. (Reserved)

- D. Failing to keep patient records of substances prescribed, dispensed or administered; and/or failing to perform appropriate prior examination and/or failure to document in the patient record performance of appropriate prior examination.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Reprimand; probation, min. 2 years, to include medical-recordkeeping course

- E. (Reserved)

- F. Inappropriate purchasing, controlling, dispensing, and/or administering of any drug.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Definite suspension, min. 60 days; subsequent probation, min. 2 years

G. Failure to use acceptable methods in selection of drugs or other modalities.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 180 days, with conditions for reinstatement; subsequent probation, min. 3 years

H. (Reserved)

I. Selling, prescribing, dispensing, giving away, or administering any drug for other than a legal and legitimate therapeutic purpose and/or selling, prescribing, dispensing, giving away, or administering any drug in exchange for sexual favors.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Permanent revocation of certificate or permanent denial of application

J. (Reserved)

K. (Reserved)

L. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a drug related felony, except where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Permanent revocation of certificate or permanent denial of application

- M. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a drug-related misdemeanor, except where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application.

Minimum Penalty: Indefinite suspension, min. 180 days, with conditions for reinstatement; subsequent probation, min. 2 years.

- N. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a drug related felony where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application.

Minimum Penalty: 90 days of suspension in addition to the minimum penalty for the applicable guideline section under Category IX.

- O. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a drug-related misdemeanor where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application.

Minimum Penalty: 30 days of suspension in addition to the minimum penalty for the applicable guideline section under Category IX.

- P. Utilizing a controlled substance in the treatment of a family member or self in violation of Section 4731-11-08, Ohio Administrative Code.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Reprimand; probation, min. 2 years, to include appropriate medical-education course

**Review/Revision History:**

*Sections I.M, I.O, and I.P: 12/10*

*Sections I.A through I.K: 10/10*

*Sections I.L and I.N: 7/10*

**CATEGORY II: MINIMAL STANDARDS OF CARE**

A. Departure from or failure to conform to minimal standards of care.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Probation, min. 3 years

B. Sexual misconduct within practice.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 1 year, with conditions for reinstatement;  
subsequent probation as appropriate

**NOTE: WHERE APPROPRIATE, PERMANENT LIMITATIONS AND RESTRICTIONS  
MAY ALSO BE IMPOSED.**

**Review/Revision History:**

*Sections II.A and II.B: 1/11*

**CATEGORY III: FRAUD, MISREPRESENTATION, OR DECEPTION**

A. Fraud in passing examination.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Revocation of certificate or denial of application (minimum required by statute)

B. (Reserved)

C. (Reserved)

D. Publishing a false, fraudulent, deceptive, or misleading statement.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Suspension for 30 days; subsequent probation, min. 1 year

E. (Reserved)

F. Obtaining, or attempting to obtain, anything of value by fraudulent misrepresentations in the course of practice.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 1 year, with conditions for reinstatement; subsequent probation, min. 2 years

G. Deceptive advertising.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Suspension for 30 days; subsequent probation, min. 1 year

- H. Representing, with purpose of obtaining compensation or advantage, that incurable disease can be cured.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 3 years, with conditions for reinstatement to include SPEX and personal/professional ethics courses; subsequent probation, min. 5 years, including requirements for a practice plan and monitoring physician prior to resuming practice

NOTE: SEE APPENDIX A IF VIOLATION BY LICENSURE APPLICANT.

**Review/Revision History:**

*Sections III.A through III.H: 2/11*

#### **CATEGORY IV: ETHICS VIOLATIONS**

- A. Division of fees for referral of patients, or receiving a thing of value for specific referral of patient to utilize particular service or business.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 1 year, with conditions for reinstatement; subsequent probation as appropriate

- B. Code of ethics violation.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Reprimand

- C. Willfully betraying a professional confidence.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Suspension for 30 days; subsequent probation, min. 1 year, to include condition of successfully completing appropriate ethics course(s)

**NOTE: SEE CATEGORY II PENALTIES FOR SEXUAL MISCONDUCT WITHIN PRACTICE, AND CATEGORY III PENALTIES FOR FRAUDULENT ACTS.**

**Review/Revision History:**

*Sections IV.A through IV.C: 5/11*

### **CATEGORY V: ACTIONS BY OTHER STATES OR ENTITIES**

Limitation, revocation, suspension, acceptance of license surrender, denial of license, refusal to renew or reinstate a license, imposition of probation, or censure or other reprimand, by another jurisdiction; action against clinical privileges by Department of Defense or Veterans Administration; or termination or suspension from Medicare or Medicaid.

Maximum Penalty: Correspond to maximum penalty in Ohio for type of violation committed

Minimum Penalty: Correspond to minimum penalty in Ohio for type of violation committed

#### **Review/Revision History:**

*Category V: 5/11*

### **CATEGORY VI: UNAUTHORIZED PRACTICE**

- A. Practice during suspension imposed by Board order.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Permanent revocation of certificate or permanent denial of application

- B. Applicant's prior practice without license or registration as physician assistant, anesthesiologist assistant, or radiologist assistant.

Maximum Penalty: Denial of licensure or P.A./A.A./R.A. registration with conditions for any future application

Minimum Penalty: Denial of licensure or P.A./A.A./R.A. registration

- C. Aiding and abetting unlicensed practice or practice by unregistered physician assistant, anesthesiologist assistant, or radiologist assistant.

Maximum Penalty: One-year suspension; subsequent 2-year probation including requirement of annual report of utilization of employee or P.A./A.A./R.A.

Minimum Penalty: Suspension for 30 days; subsequent 2-year probation including requirement of annual report of utilization of employee or P.A./A.A./R.A.

- D. Practice outside scope of license or registration.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: 30-day suspension

- E. Supervising a physician assistant, anesthesiologist assistant, or radiologist assistant in the absence of an approved supervisory plan and approved supervision agreement.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Suspension for 90 days

- F. Practice of a physician assistant, anesthesiologist assistant, or radiologist assistant in the absence of an approved supervisory plan and an approved supervision agreement.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Suspension for 90 days

- G. Permitting a physician assistant, anesthesiologist assistant, or radiologist assistant to perform services as a P.A., A.A., or R.A. in a manner that is inconsistent with the supervisory plan or special services plan under which that P.A./A.A./R.A. practices.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Probation (non-appearing), min. 1 year

- H. Practice of a physician assistant, anesthesiologist assistant, or radiologist assistant in a manner that is inconsistent with the supervisory plan or special services plan under which that P.A./A.A./R.A. practices.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Probation (non-appearing), min. 1 year

- I. Permitting a physician assistant to perform services as a physician assistant in a manner that is not in accordance with Chapter 4730 or other applicable chapter of the Revised Code and/or the rules adopted thereunder.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 180 days, with conditions for reinstatement; subsequent probation, min. 3 years

- J. Practice of a physician assistant in a manner that is not in accordance with Chapter 4730 or other applicable chapter of the Revised Code and/or the rules adopted thereunder.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 180 days, with conditions for reinstatement; subsequent probation, min. 3 years

- K. Failure to timely report termination of a physician assistant supervision agreement to the Board.

Maximum Penalty: Suspension for 2 years

Minimum Penalty: Reprimand

- L. Limited Practitioner Holding Self Out as Doctor or Physician in Violation of Rule 4731-1-03(D) and/or 4731-1-03(E), Ohio Admin. Code.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 180 days; conditions for reinstatement to include eliminating the offending references from any advertising, internet sites, signs, business cards, stationery, and similar locations; subsequent probation, min. 2 years

**NOTE: SEE CATEGORY VII PENALTIES FOR PRACTICE IN VIOLATION OF  
CONDITIONS OF LIMITATION PLACED BY THE BOARD**

**Review/Revision History:**

*Sections VI.A through VI.K: 5/11*

*Section VI.L: 12/11*

**CATEGORY VII: VIOLATION OF CONDITIONS OF LIMITATION**

- A. Violation of practice or prescribing limitations placed by the Board.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. one year, with conditions for reinstatement; subsequent probation, min. 3 years

- B. Violation of conditions of limitation, other than practice prohibitions, placed by the Board.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. as appropriate, with conditions for reinstatement; subsequent probation, min. 3 years

**Review/Revision History:**

*Sections VII.A and VII.B: 8/11*

**CATEGORY VIII: CRIMINAL ACTS OR CONVICTIONS**

- A. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a felony committed in course of practice, except where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Permanent revocation of certificate or permanent denial of application

- B. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a felony not committed in course of practice.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 30 days, with conditions for reinstatement; subsequent 3 year probation

- C. Commission of act constituting a felony in this state, regardless of where committed, if related to practice, except where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Permanent revocation of certificate or permanent denial of application

- D. Commission of act constituting a felony in this state, regardless of where committed, if unrelated to practice.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 30 days, with conditions for reinstatement; subsequent 3 year probation

- E. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in course of practice or involving moral turpitude.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 180 days, with conditions for reinstatement; subsequent probation, min. 2 years

- F. Commission of act constituting a misdemeanor committed in course of practice or involving moral turpitude.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Suspension for 30 days; subsequent probation, min. 2 years

- G. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a felony committed in course of practice, where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application.

Minimum Penalty: 90 days of suspension in addition to the minimum penalty for the applicable guideline section under Category IX.

- H. Commission of act constituting a felony in this state, regardless of where committed, if related to practice, where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application.

Minimum Penalty: 90 days of suspension in addition to the minimum penalty for the applicable guideline section under Category IX.

NOTE: SEE CATEGORY I PENALTIES FOR DRUG RELATED CONVICTIONS

**Review/Revision History:**

*Sections VIII.B and VIII.D: 8/11*

*Sections VIII.E and VIII.F: 9/10*

*Sections VIII.A, VIII.C, VIII.G, and VIII.H: 7/10*

### **CATEGORY IX: IMPAIRMENT OF ABILITY TO PRACTICE**

- A. Initial Impairment and/or Less than One Year of Sobriety: Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision).

This section applies to:

- (1) All licensees holding an active certificate,
- (2) All licensees holding a previously active certificate that is currently expired/inactive/lapsed for any reason,
- (3) All applicants for licensure/reinstatement/restoration who have not demonstrated continuous current sobriety for at least one year since the date of the applicant's discharge from treatment where the treatment was completed and conformed with board requirements.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, no minimum, with conditions for reinstatement; subsequent probation, minimum 5 years

- B. "Slip Rule": Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision), where all conditions set forth in Rule 4731-16-02(D), Ohio Administrative Code, have been met.

The Respondent will not be subjected to suspension or other formal discipline

- C. First Relapse: Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision); first relapse during or following treatment, and/or where all conditions set forth in Rule 4731-16-02(D), Ohio Administrative Code, have not been met.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 90 days following date of license suspension (mandated by administrative rule), with conditions for reinstatement; subsequent probation, min. 5 years

- D. Second Relapse: Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision); second relapse during or following treatment.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 1 year following date of license suspension (mandated by administrative rule), with conditions for reinstatement; subsequent probation, min. 5 years

- E. Third Relapse: Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision); third relapse during or following treatment.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 3 years following date of license suspension (mandated by administrative rule), with conditions for reinstatement; subsequent probation, min. 5 years

- F. Impairment, 1 - 5 Years of Sobriety: Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision).

This section applies to all applicants for licensure/reinstatement/restoration who have demonstrated continuous current sobriety for more than one year, but less than five years, since the date of the applicant's discharge from treatment where the treatment was completed and conformed with board requirements.

Maximum Penalty: Permanent denial of application

Minimum Penalty: Application granted; subject to probation for a minimum term that, when added to the applicant's demonstrated period of continuous current sobriety, shall not be less than 5 years

- G. Impairment, 5+ Years of Sobriety: Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision).

This section applies to all applicants for licensure/reinstatement/restoration who have demonstrated continuous current sobriety for more than five years since the date of the applicant's discharge from treatment where the treatment was completed and conformed with board requirements.

Maximum Penalty: Permanent denial of application

Minimum Penalty: License may be granted/reinstated/restored without probation or other disciplinary action

- H. Mental/Physical Illness, Currently Unable To Practice: Inability to practice according to acceptable and prevailing standards of care by reason of mental or physical illness (including any mental disorder, mental illness, physical illness, or physical deterioration that adversely affects cognitive, motor, or perceptive skills).

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: If applicant: Granting of license subject to indefinite suspension, min. as appropriate; conditions for reinstatement; subsequent probation, min. 2 years  
If licensee: Indefinite suspension, min. as appropriate; conditions for reinstatement; subsequent probation, min. 2 years

- I. Mental/Physical Illness, Currently Able To Practice Subject To Appropriate Treatment, Monitoring, Or Supervision: Inability to practice according to acceptable and prevailing standards of care by reason of mental or physical illness (including any mental disorder, mental illness, physical illness, or physical deterioration, that adversely affects cognitive, motor, or perceptive skills) without appropriate treatment, monitoring, or supervision.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: If applicant: Granting of license subject to probationary terms and conditions, min. 2 years  
If licensee: Probation, min. 2 years

**Review/Revision History:**

*Sections IX.A through IX.I: 9/11*

### CATEGORY X: C.M.E. REQUIREMENTS

- A. Failure to respond timely to C.M.E. audit, but requisite C.M.E. completed.

Maximum Penalty: Reprimand; subject to mandatory audits of compliance with CME requirements for the current CME acquisition period and for two full CME acquisition periods thereafter.

Minimum Penalty: Reprimand.

- B. Failure to complete C.M.E. as certified on renewal application.

Maximum Penalty: Reprimand; \$5,000.00 fine; indefinite suspension until any outstanding shortage of CME credits has been rectified; subject to mandatory audits of compliance with CME requirements during suspension (if any), for the current CME acquisition period at the time of reinstatement (or for current CME acquisition period if no suspension), and for two full CME acquisition periods thereafter.

Minimum Penalty: Reprimand; \$1,000.00 fine; indefinite suspension until any outstanding shortage of CME credits has been rectified; subject to mandatory audits of compliance with CME requirements during suspension (if any), for the current CME acquisition period at the time of reinstatement (or for current CME acquisition period if no suspension), and for two full CME acquisition periods thereafter.

- C. Failure to complete C.M.E. as certified on renewal application; repeat offense.

Maximum Penalty: \$5,000.00 fine; indefinite suspension, min. 90 days, with conditions for reinstatement; subject to mandatory audits of compliance with CME requirements during suspension, for the current CME acquisition period at the time of reinstatement, and for two full CME acquisition periods thereafter.

Minimum Penalty: \$3,000.00 fine; indefinite suspension, min. 60 days, with conditions for reinstatement; subject to mandatory audits of compliance with CME requirements during suspension, for the current CME acquisition period at the time of reinstatement, and for two full CME acquisition periods thereafter.

**NOTE: IF FRAUDULENT MISREPRESENTATIONS (OTHER THAN FALSE CERTIFICATION OF COMPLETION) ARE MADE WITH RESPECT TO C.M.E., CATEGORY III PENALTY MAY BE APPROPRIATE IN ADDITION TO THE STANDARD C.M.E. PENALTY. A BIFURCATED ORDER MAY BE USED.**

**Review/Revision History:**

*Sections X.A through X.C: 10/11*

### **CATEGORY XI: MISCELLANEOUS VIOLATIONS**

- A. Violating or attempting to violate, directly or indirectly, or assisting in or abetting violation of, or conspiring to violate, the Medical Practices Act or any rule promulgated by the Board.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Correspond to minimum penalty for actual offense

- B. Violation of any abortion law or rule.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Reprimand

- C. Permitting name or certificate to be used when not actually directing treatment.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Suspension, 1 year; subsequent probation, min. 1 year

- D. Failure to cooperate in an investigation conducted by the Board.

Maximum Penalty: Indefinite suspension of license with conditions for reinstatement to include, at a minimum, full cooperation in the underlying investigation.

Minimum Penalty: Reprimand, as long as respondent has fully cooperated in the underlying investigation.

#### **Review/Revision History:**

*Sections XI.A through XI.D: 10/11*

**APPENDIX A: APPLICABILITY OF GUIDELINES TO LICENSURE AND  
TRAINING CERTIFICATE APPLICANTS**

The penalties specified in Categories I through XI are generally tailored to apply to violations of the Medical Practices Act by licensees. When applicants for licensure or training certificates are found to have committed like violations, the appropriate penalties will be formulated in terms of either grant, denial, or permanent denial of the application. A grant of a license or training certificate may be accompanied by limitation, suspension, requirements for reinstatement, probation, and/or reprimand, as appropriate, and should be proportionate to penalties imposed for licensees.

**Review/Revision History:**

*11/11*

## **APPENDIX B: AGGRAVATING AND MITIGATING FACTORS**

After a violation has been established, the Board may consider aggravating and mitigating circumstances in deciding what penalty to impose. If the Board deems such circumstances sufficient to justify a departure from disciplinary guidelines, they should be specified during the Board's deliberations.

### AGGRAVATION

Aggravation or aggravating circumstances are any considerations or factors which might justify an increase in the degree of discipline to be imposed. Aggravating factors may include, but are not limited to:

- (a) Prior disciplinary actions
- (b) Dishonest or selfish motive
- (c) A pattern of misconduct
- (d) Multiple violations
- (e) Submission of false evidence, false statements, or other deceptive practices during the disciplinary process
- (f) Refusal to acknowledge wrongful nature of conduct
- (g) Adverse impact of misconduct on others
- (h) Vulnerability of victim
- (i) Willful or reckless misconduct
- (j) Use/abuse of position of trust, or of licensee status, to accomplish the deception, theft, boundaries violation, or other misconduct
- (k) Where an individual has a duty to disclose information to the Board, the extent of delay in disclosing all or part of the information, including the failure to self-report relapse immediately to the Board as required
- (l) Failure to correct misconduct after recognizing the existence of the problem/violation

### MITIGATION

Mitigation or mitigating circumstances are any considerations or factors which might justify a reduction in the degree of discipline to be imposed. Mitigating factors may include, but are not limited to:

- (a) Absence of a prior disciplinary record
- (b) Absence of a dishonest or selfish motive
- (c) Isolated incident, unlikely to recur
- (d) Full and free disclosure to Board, when done in a timely manner (such as before discovery is imminent)

- (e) Physical or mental disability or impairment  
(NOTE: IT IS THE BOARD'S STATED POLICY THAT IMPAIRMENT SHALL NOT EXCUSE ACTS WHICH RESULT IN CONVICTION OR WHICH POTENTIALLY HAVE AN ADVERSE IMPACT ON OTHER INDIVIDUALS.)
- (f) Interim rehabilitation or remedial measures
- (g) Remorse
- (h) Absence of adverse impact of misconduct on others
- (i) Remoteness of misconduct, to the extent that the passage of time between the misconduct and the Board's determination of the sanction is not attributable to the respondent's delay, evasion, or other acts/omissions
- (j) Absence of willful or reckless misconduct
- (k) Prompt correction of misconduct/problem after recognizing its existence.

**Review/Revision History:**

*11/11*

requirements in the *International Fire Code*<sup>®</sup>, and if so, the Comm 10 requirements would override those referenced requirements.

In reference to the 2009 changes to the definitions in IBC chapter 9, Jim noted those changes could have impacts on other parts of the code that are not yet fully considered at the national level, such as the expansion of “fire area” to better match the definition of “building area” in IBC chapter 5. Jim explained that if 2012 changes to the IBC are developed to address such impacts, the Department may include those changes in adopting the 2009 IBC.

In reference to the 2009 changes for fire areas in sections 903.2.9 and 903.2.9.1, Chris indicated some owners or designers may believe the allowed unsprinklered areas are too small.

Jim explained that the 2009 changes for balconies and decks in sections 903.2.9 and 903.2.9.1 clarify that fire sprinklers are not required where there is no overlying roof to trap heat.

Jim explained that section 906 has been expanded substantially, to directly incorporate more of the IFC requirements for portable fire extinguishers.

It was noted that sections 907.1.1 and 907.1.2 may be deleted so as to not redundantly address the plan submittal and construction oversight requirements that are addressed more comprehensively in chapter Comm 61. Chris asked if local governments could then still choose to apply sections 907.1.1 and 907.1.2, and the answer was yes, provided the application occurs through a local ordinance.

In reviewing section 907.2, Jim explained that criteria has been added for Group B ambulatory health care facilities in section 907.2.2.1 and in other applicable sections throughout the IBC, to better address medical clinics where care recipients may be anesthetized.

Jim noted the Commercial Building Code Advisory Council may review the shaftway-marking requirements in section 914.1.2, and the fire-pump acceptance testing in section 913.5.

Jim noted that recent Wisconsin statutory requirements for carbon monoxide alarms may be incorporated as modifications to the IBC.

The Council did not recommend any Wisconsin-based modifications to the 2009 IBC changes.

#### Current Wisconsin modifications to the IBC

In reviewing the current Wisconsin modifications of the IBC, which were sent to the Council members in advance of the meeting, Jim noted the Department will likely retain the modifications in sections Comm 62.0307, 62.0400, 62.0414, and 62.0415. Staff review of the modifications for fire sprinkler systems in Comm 62.0903 may result in some updates for the cross-references there to IBC sections – and may result in some deletions, such as for the