Public Citizen's Health Research Group Ranking of the Rate of State Medical Boards' Serious Disciplinary Actions, 2008-2010

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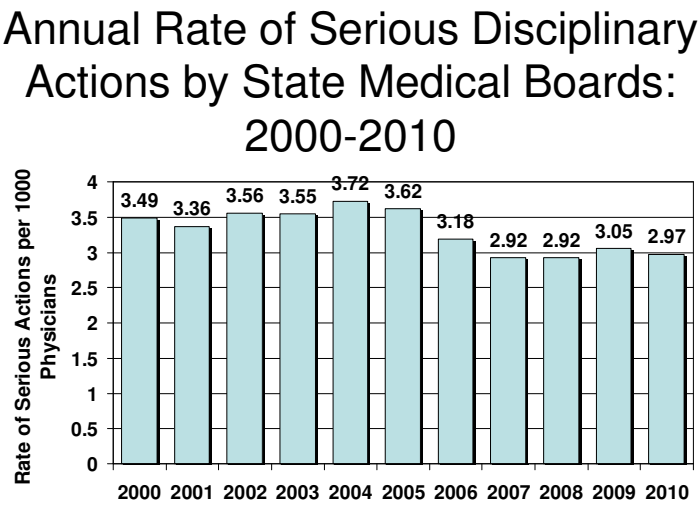
Using an analysis of data just released by the Federation of State Medical Boards (FSMB) on all disciplinary actions taken against doctors in 2010, we have calculated the rate of serious disciplinary actions (revocations, surrenders, suspensions and probation/restrictions) taken by state medical boards in 2010. This rate of serious actions per 1,000 physicians is slightly lower than the rate in 2009 and continues to be significantly lower than the peak for the past 10 years (see figure below). The rate in 2010 alone — 2.97 serious actions per 1,000 physicians — is still 20 percent lower than the peak rate in 2004 alone of 3.72 serious actions per 1,000 physicians. If the national rate of doctor discipline per 1,000 doctors had remained as high in the year 2010 (2.97) as it was in 2004 (3.72), there would have been a total of 745 additional serious disciplinary actions in 2010 taken against U.S. physicians than there actually were. With a typical doctor having between 500 and 1,000 or more patients in their practice, the positive impact of this on the large number of patients going to these doctors would be enormous.



The most recent three-year average state disciplinary rates (2008-10) ranged from 1.29 serious actions per 1,000 physicians (Minnesota) to 5.98 actions per 1,000 physicians (Louisiana), a 4.6-fold difference between the best and worst state doctor disciplinary boards (see Methods at the end of this report for the details of our calculations).

10 Worst States (lowest three-year rate of serious disciplinary actions)

As can be seen in the table below, the bottom 10 states, those with the lowest serious disciplinary action rates for 2008-10, were (starting with the lowest):

State	Actions/1,000 docs 2008-10	Times in bottom 10 since 2001-3
Minnesota	1.29	8
South Carolina	1.31	8
Wisconsin	1.59	8
Connecticut	1.69	5
Massachusetts	1.83	2
Rhode Island	1.92	3
Florida	1.94	3
New Hampshire	2.13	3
Utah	2.15	1
Vermont	2.18	2

This list includes not only small states such as New Hampshire and Vermont but also large states such as Florida, Massachusetts and Minnesota.

The table above shows that three of these 10 states (Minnesota, South Carolina and Wisconsin) have been consistently among the bottom 10 states for each of the last eight three-year periods. In addition, Connecticut has been in the bottom 10 states for each of the last five three-year cycles. Florida has now been in the bottom 10 boards for the last three three-year periods. For the first time since we have been reporting on state boards, Utah is among the bottom 10 boards.

This year we have again done further analyses to determine which states have had the largest decreases or increases in their rankings compared to other states between the year of their highest rate and the 2008-10 period. All of the states with the greatest decrease or increase in rankings had considerable changes in the actual rates between their highest year and 2008-10.

As can be seen below, five states had decreases of at least 24 in their ranking of state disciplinary actions from the year of their highest rate until the latest (2008-10) rate.

States with Largest Decreases in Rank for the Rate of Serious Disciplinary Actions from Their Highest Rank to 2008-10

State	Highest rate and rank (year)	2008-10 rank	Decrease in rank	Decrease in rate/ 1,000 docs
Massachusetts	23 (2004)	47	24	1.58
Georgia	15 (2003)	40	25	1.83
Vermont	8 (2007)	42	34	2.65
Utah	10 (2003)	43	33	3.28
Montana	8 (2004)	32	24	3.60

As can be seen in the table above, Massachusetts fell 24 places in ranking from 2002-4 until 2008-10. If the rate of serious disciplinary actions in 2008-10 had been as high as in 2002-4 (1.58 more serious actions per 1,000 doctors per year), there would have been 56 more serious disciplinary actions taken against Massachusetts physicians in 2008-10 than actually occurred.

10 Best States (highest three-year rates of serious disciplinary actions)

The top 10 states for 2008-10 are (in order from the top down):

State	Actions/1,000 docs 2008-10	Times in top ten since 2001-3
Louisiana	5.98	3
Alaska	5.47	8
Ohio	5.36	8
Oklahoma	5.23	8
Wyoming	5.14	6
North Dakota	5.05	6
New Mexico	4.99	2
Arizona	4.82	8
Nebraska	4.57	3
Colorado	4.51	8

Table 2 also shows that five of these 10 states (Alaska, Arizona, Colorado, Ohio and Oklahoma) have been in the top 10 for all eight of the three-year average periods covered in this report.

States with Largest Increases in Rank (20 or more) for the Rate of Serious Disciplinary Actions from Year of Lowest Average Rank* to 2008-10

State	Lowest rank and rate (year)	2008-10 rank	Increase in rank	Increase in rate/1,000 docs
Hawaii	51 (2003)	11	40	3.20
Delaware	50 (2003)	13	37	2.69
Maine	46 (2005)	19	27	1.68
North Carolina	41 (2003)	16	25	1.62
Washington	45 (2006)	18	27	1.70
Arkansas	45 (2004)	23	22	1.02

**See Table 2.*

For the state of North Carolina, the most populous of the above states with large increases in ranks, the increase of 1.62 serious actions per 1,000 licensed physicians translates into an increase of 46 more physicians seriously disciplined than if the rate had stayed as it was in 2001-3 (1.62 multiplied by 28.3, the number of thousands of physicians).

For the state of Washington, the second most populous of those states with large increases in rank, the increase in 1.70 serious actions per 1,000 licensed physicians translates into 1.70 multiplied by 21.4 (the number of thousands of physicians) for an increase in 36 more physicians seriously disciplined than if the rate had stayed as it was in 2002-4.

Overall, between the 2001-3 and the 2008-10 periods, a total of 25 states had changes in the rate of serious disciplinary actions of more than one physician disciplined per 1,000 licensed in the state. However, partly reflecting the much tighter state budgets now than then, those states decreasing their rates of serious disciplinary actions by at least one per 1,000 doctors outnumbered those increasing the rates 17-8. Other issues important in addition to budget considerations are discussed below.

Discussion

These data demonstrate a remarkable variability in the rates of serious disciplinary actions taken by the state boards. Once again, only one of the nation's 15 most populous states, Ohio, is represented among those 10 states with the highest disciplinary rates. For the third year in a row, one of

the largest states in the country, Florida, is among the 10 states with the lowest rates of serious disciplinary actions. Absent any evidence that the prevalence of physicians deserving of discipline varies substantially from state to state, this variability must be considered the result of the boards' practices. Indeed, the "ability" of certain states to rapidly increase or rapidly decrease their rankings (even when these are calculated on the basis of three-year averages) can only be due to changes in practices at the board level; the prevalence of physicians eligible for discipline cannot change so rapidly.

Moreover, there is considerable evidence that most boards are under-disciplining physicians. For example, in a report on doctors disciplined for criminal activity that we published in 2006, 67 percent of insurance fraud convictions and 36 percent of convictions related to controlled substances were associated with only non-severe discipline by the board.[1]

In this report, we have concentrated on the most serious disciplinary actions. Although the FSMB does report less severe actions, such as fines and reprimands, it is not appropriate to provide such actions with the same weight as license revocations, for example. A state that embarks on a strategy of switching over time from revocations or probations to fines or reprimands for similar offenses should have a rate and a ranking that reflects this decision to discipline less severely.

A relatively recent trend has been for state boards to post the particulars of disciplinary actions they have taken on the Internet. In October 2006, Public Citizen's Health Research Group published a report that ranked the states according to the quality of those postings.[2] The report showed variability in the quality of those Web sites akin to that reported for disciplinary rates in this report. There was no correlation between state ranking in the Web site report and state ranking in that year's disciplinary rate report (Spearman's rho = 0.0855; p=0.55). A good Web site is no substitute for a poor disciplinary rate (or vice versa); states should both appropriately discipline their physicians and convey that information to the public. However, no state ranked in the top 10 in both reports.

This report ranks the performance of medical boards by their disciplinary rates; it does not purport to assess the overall quality of medical care in a state or to assess the function of the boards in other respects. It cannot

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[1] Jung P, Lurie P, Wolfe SM. U.S. Physicians Disciplined For Criminal Activity. Health Matrix 2006; 16:335-50.

[2] Larson, M, Marcus B, Lurie P, Wolfe SM. 2006 Report of Doctor Disciplinary Information on State Web Sites: A Survey and Ranking of State Medical and Osteopathic Board Web Sites, available at http://www.citizen.org/Page.aspx?pid=700.

determine whether a board with, for example, a low disciplinary rate has been starved for resources by the state or whether the board itself has a tendency to mete out lower (or no) forms of discipline. From the patient's perspective, of course, this distinction is irrelevant.

What Makes the Better Boards "Better"?

Boards are likely to be able to do a better job in disciplining physicians if the following conditions are met:

- Adequate funding (all money from license fees going to fund board activities instead of going into the state treasury for general purposes)
- Adequate staffing
- Proactive investigations rather than only reacting to complaints
- The use of all available/reliable data from other sources, such as Medicare and Medicaid sanctions, hospital sanctions, malpractice payouts, and the criminal justice system
- Excellent leadership
- Independence from state medical societies
- Independence from other parts of the state government so that the board has the ability to develop its own budgets and regulations
- A reasonable legal standard for disciplining doctors ("preponderance of the evidence" rather than "beyond a reasonable doubt" or "clear and convincing evidence")

Most states are not living up to their obligations to protect patients from doctors who are practicing medicine in a substandard manner. Serious attention must be given to finding out which of the above bulleted variables are deficient in each state. Action must then be taken, legislatively and through pressure on the medical boards themselves, to increase the amount of discipline and, thus, the amount of patient protection. Without adequate legislative oversight, many medical boards will continue to perform poorly.

Methods

Public Citizen's Health Research Group has calculated the rate of serious disciplinary actions per 1,000 doctors in each state. Using state-by-state data just released by the FSMB on the number of disciplinary actions taken against doctors in 2010,[3] combined with data from earlier FSMB reports covering 2008 and 2009, we have compiled a national report ranking state boards by the rate of serious disciplinary actions per 1,000 doctors for the

[3] Federation of State Medical Boards. Summary of 2010 Board Actions, available at http://www.fsmb.org/pdf/2010-summary-of-board-actions.pdf.

years 2008-10 (see Table 1) and for earlier three-year intervals (see Table 2).

Because some small states do not have many physicians, an increase or decrease of one or two serious actions in a year can have a much greater effect on the rate of discipline in such states (and their ranks) than it would in larger states. To minimize such fluctuations, we therefore calculate the average rate of discipline over a three-year period: the year of interest and the preceding two years. Thus, the newest ranking is based on rates from 2008, 2009 and 2010, not the rate for 2010 alone.

Our calculation of rates of serious disciplinary actions per 1,000 doctors by state is created by taking the number of such actions for each state (revocations, surrenders, suspensions and probation/restrictions — the first two categories in the FSMB data) and dividing that by the American Medical Association (AMA) data on total M.D.s as of December 2010[4] in that state. We add to this denominator the number of osteopathic physicians[5] for the 37 boards that are combined medical/osteopathic boards. We then multiply the result by 1,000 to get board disciplinary rates per 1,000 physicians. This rate calculation is done for each year and the average rate for the last three years is used as the basis for this year's state board rankings (Table 1). We then repeated these calculations for each of the seven previous three-year intervals (2001-3, 2002-4, 2003-5, 2004-6, 2005-7, 2006-8, and 2007-9, Table 2).

In previous years, we used AMA data on non-federal M.D.s, but since then the AMA now only provides information on the total number of licensed physicians, without a breakdown by federal/non-federal status. We therefore amended our traditional protocol to use data on the *total* number of M.D.s in each state as the denominator in calculating the rates. When we did this for the first time, to ensure that the ranks based on this new denominator are as comparable as possible to data from previous years, we entered the data for total physicians and re-calculated the rates of serious actions of every state for each year in the period from 2001-6, as well as the related three-year rankings. All states' rates, as currently calculated, are therefore somewhat lower than rates in our previous reports because of the larger denominator. However, this had no effect on the rankings of most states because the larger denominators affect all states[6]: the ranks of 39 of the

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[4] Physician Characteristics and Distribution in the U.S. American Medical Association, 2011 Edition.

[5] Fact Sheet: American Osteopathic Association. Statistics as of August, 2004, available at http://www.osteopathic.org/index.cfm?PageID=aoa_ompreport_us#50.

[6] This is not surprising, as in the 2004 edition of the AMA publication, the last to include the federal/non-federal physician breakdown, only 2.46 percent of all physicians were federal

states for the 2002-4 interval, for example, were identical to what they had been in our report for that interval issued in 2005,[7] in which we used only non-federal physicians. Of the 12 states with different ranks, the rank of six increased by only one place and the other six decreased by one place.

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employees. Moreover, these physicians were disproportionately represented in a small number of states (e.g., Alaska, District of Columbia, Maryland and Hawaii).

[7] Wolfe, SM, Lurie P. Ranking of the Rate of State Medical Boards' Serious Disciplinary Actions: 2002-2004, available at http://www.citizen.org/Page.aspx?pid=2381.

RATES AND RANKING OF THE RATE OF STATE MEDICAL BOARDS' SERIOUS DISCIPLINARY ACTIONS, 2010

Table 1: Ranking of Serious Doctor Disciplinary Action Rates by State Medical Licensing Boards, 2008-2010

Rank 2008-2010[1]	State	Number of Serious Actions, 2010	Number of Physicians, 2010[2],[3]	Serious Actions per 1,000 Physicians, 2008 – 2010[4]
1	Louisiana	98	13484	5.98
2	Alaska	6	1928	5.47
3	Ohio	210	39911	5.36
4	Oklahoma	28	7476	5.23
5	Wyoming	11	1321	5.14
6	North Dakota	5	1893	5.05
7	New Mexico	23	5688	4.99
8	Arizona	70	16608	4.82
9	Nebraska	32	5352	4.57
10	Colorado	58	16379	4.51
11	Hawaii	20	5029	4.38
12	Kentucky	29	11823	4.03
13	Delaware	22	2794	3.96
14	Iowa	30	7832	3.89
15	West Virginia	16	4894	3.88
16	North Carolina	103	28311	3.80
17	Oregon	52	13486	3.78
18	Washington	98	21337	3.76
19	Maine	11	4380	3.70
20	Illinois	140	43485	3.51
21	Virginia	71	26259	3.45
22	Kansas	20	8216	3.11
23	Arkansas	27	7035	3.08
24	New York	271	90014	3.03
25	Missouri	60	18601	2.91
26	Indiana	35	16727	2.78
27	Tennessee	55	18839	2.78
28	Pennsylvania	130	44336	2.76
29	Idaho	7	3434	2.72
30	Nevada	13	5829	2.70
31	Alabama	33	11928	2.69
32	Montana	8	2794	2.66
33	Mississippi	18	6422	2.62
34	Texas	181	63495	2.61
35	California	317	116489	2.61
36	South Dakota	5	2241	2.60
37	District of Columbia	6	5481	2.57
38	Michigan	85	29133	2.57
38	Maryland	79	27895	2.55
40	Georgia	60	25018	2.52
41	New Jersey	68	34111	2.28
42	Vermont	9	2750	2.18
43	Utah	18	6701	2.15
44	New Hampshire	18	4783	2.13
45	Florida	115	57066	1.94
46	Rhode Island	6	4768	1.92
47	Massachusetts	71	35359	1.83
48	Connecticut	23	15634	1.69
49	Wisconsin	30	17938	1.59
50	South Carolina	18	12423	1.31
51	Minnesota	28	18310	1.29

[1] Rank is calculated based upon an average of the disciplinary rates for 2008, 2009, and 2010.
[2] Includes osteopathic physicians for boards with jurisdiction over both physicians and osteopaths.
[3] In previous reports we used non-federal physicians, but in this report we used data for total physicians because the American Medical Association no longer provides physician data broken down by federal/non-federal status.
[4] Disciplinary rate for the period is calculated by averaging the disciplinary rates over the three-year period 2008-10.

Table 2: Ranks Based upon Average Doctor Disciplinary Rates over the Preceding Three Years[5,6]

	2003	2004	2005	2006	2007	2008	2009	2010
Alabama[7]	13	17	22	26	34	36	37	31
Alaska[7]	6	4	2	1	1	1	1	2
Arizona	2	7	6	9	4	4	5	8
Arkansas[7]	29	45	39	23	16	18	32	23
California	22	22	23	27	36	43	41	35
Colorado[7]	8	9	8	8	6	9	7	10
Connecticut[7]	38	38	38	42	45	47	47	48
Delaware[7]	50	50	50	44	29	23	35	13
District of Columbia[7]	42	31	36	37	22	17	16	37
Florida	36	37	32	35	31	44	44	45
Georgia[7]	15	18	20	25	33	42	36	40
Hawai[7]	51	51	42	33	21	13	10	11
Idaho[7]	14	21	25	24	25	26	28	29
Illinois[7]	35	25	18	12	12	15	15	20
Indiana[7]	27	27	24	28	27	30	24	26
Iowa[7]	12	12	15	7	11	8	13	14
Kansas[7]	32	30	31	36	41	34	27	22
Kentucky[7]	1	2	1	2	2	2	3	12
Louisiana[7]	17	14	13	11	14	7	8	1
Maine	34	35	46	34	24	10	14	19
Maryland[7]	48	47	44	43	43	45	43	39
Massachusetts[7]	23	23	28	30	35	39	46	47
Michigan	40	39	40	39	40	37	39	38
Minnesota[7]	47	48	49	49	50	51	51	51
Mississippi[7]	20	41	51	51	49	48	45	33
Missouri[7]	31	11	10	6	30	27	34	25
Montana[7]	9	8	12	18	20	20	22	32
Nebraska[7]	28	24	16	10	5	11	11	9
Nevada	33	46	47	47	46	32	29	30
New Hampshire[7]	25	26	21	21	26	46	48	44
New Jersey[7]	24	29	35	40	42	41	40	41
New Mexico	21	19	29	22	37	24	9	7
New York[7]	18	16	17	17	19	19	21	24
North Carolina[7]	41	34	26	16	15	14	12	16
North Dakota[7]	3	3	7	19	13	6	2	6
Ohio[7]	7	6	4	4	3	3	4	3
Oklahoma	5	5	5	5	9	5	6	4
Oregon[7]	16	20	19	20	17	16	17	17
Pennsylvania	45	36	33	32	38	31	31	28
Rhode Island[7]	46	44	37	38	23	29	30	46
South Carolina[7]	43	43	45	50	51	50	50	50
South Dakota[7]	37	33	43	48	47	35	26	36
Tennessee	44	40	30	29	28	40	33	27
Texas[7]	26	28	27	31	32	33	38	34
Utah	10	13	14	15	10	21	25	43
Vermont	19	15	11	13	8	22	42	42
Virginia[7]	30	32	34	41	39	28	19	21
Washington	39	42	41	45	44	38	23	18
West Virginia	11	10	9	14	18	25	18	15
Wisconsin[7]	49	49	48	46	48	49	49	49
Wyoming[7]	4	1	3	3	7	12	20	5

[5] Rank for each year is calculated based on an average of the disciplinary rates from that year and the preceding two years.

[6] Whereas in previous reports we used data on non-federal physicians, in this report we used data for total physicians because the American Medical Association no longer provides physician data broken down by federal/non-federal status. The data in this table are based on total physician data for all years, including those in previous reports. Differences in rank from previous reports are minor (see text).

[7] These states have a combined state medical and osteopathy board.