

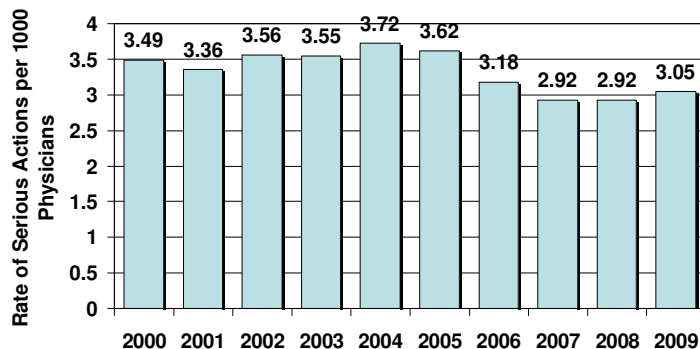
## Public Citizen’s Health Research Group Ranking of the Rate of State Medical Boards’ Serious Disciplinary Actions, 2007-2009

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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 2009, we have calculated the rate of serious disciplinary actions (revocations, surrenders, suspensions and probation/restrictions) taken by state medical boards in 2009. This rate of serious actions per 1,000 physicians, although slightly higher than the rate in 2008, continues to be significantly lower than the peak for the past ten years (see Figure below). The rate in 2009 — 3.05 serious actions per 1000 physicians — is still 18% lower than the peak rate in 2004 of 3.72 serious actions per 1,000 physicians.

### Annual Rate of Serious Disciplinary Actions by State Medical Boards: 2000-2009



The most recent three-year average state disciplinary rates (2007-2009) ranged from 1.07 serious actions per 1,000 physicians (Minnesota) to 7.89 actions per 1,000 physicians (Alaska), a 7.4-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 Table 1, the bottom 10 states, those with the lowest serious disciplinary action rates for 2007-2009, were, starting with the lowest:**

- **Minnesota (1.07 actions per 1000 physicians);**
- **South Carolina (1.09);**
- **Wisconsin (1.59);**
- **New Hampshire (1.65);**
- **Connecticut (1.80);**
- **Massachusetts (1.93);**
- **Mississippi (2.17);**
- **Florida (2.25);**
- **Maryland (2.30); and**
- **Vermont (2.34).**

This list includes not only small states such as New Hampshire but large states such as Florida.

Table 2 shows that four of these 10 states (Maryland, Minnesota, South Carolina and Wisconsin) have been consistently among the bottom 10 states for each of the last seven three-year periods. In addition, Mississippi has been among the bottom 10 states for each of the last six three-year cycles, Connecticut has been in the bottom 10 states for each of the last four three-year cycles.

This year we have done further analyses to determine which states have had the largest decreases or increases in their ranking compared to other states between the 2001-3 and 2007-9 periods. All of the states with the greatest decrease or increase in rankings (at least 20 places lower or higher) had considerable changes in the actual rates between 2001-3 and 2006-9.

As can be seen below, five states had decreases of at least 20 in their ranking of state disciplinary actions from the 2001-3 rate until the latest (2006-8 rate).

**States With Largest Decreases in Rank (20 or more) for the Rate of Serious Disciplinary Actions from 2001-3 to 2007-9**

State	2001-3 Rank	2007-9 Rank	Decrease in Rank	Decrease in Rate/ 1,000 Docs
Mississippi	20	45	25	1.20
Alabama	13	37	24	2.21
Massachusetts	23	46	23	1.33
New Hampshire	25	48	23	1.58
Vermont	19	42	23	1.75
Georgia	15	36	21	1.81

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

The top 10 states for 2007-9 are (in order from the top down):

- **Alaska (7.89 serious actions per 1,000 physicians);**
- **North Dakota (6.01);**
- **Kentucky (5.67);**
- **Ohio (5.43);**
- **Arizona (5.20);**
- **Oklahoma (5.01);**
- **Colorado (4.99);**
- **Louisiana (4.76);**
- **New Mexico (4.13); and**
- **Hawaii (4.03).**

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

**States With Largest Increases in Rank (20 or more) for the Rate of Serious Disciplinary Actions From 2001-3 to 2007-9**

State	2001-3 Rank	2007-9 Rank	Increase in Rank	Increase in Rate/ 1,000 Docs
Hawaii	51	10	41	2.85
North Carolina	41	12	29	1.77
District of Columbia	42	16	26	1.58
Illinois	35	15	20	1.37
Maine	34	14	20	1.38

For a state such as Illinois, with 42,765 physicians in 2008, the improvement in discipline between the rate in 2001-3 and the rate in 2007-9 means that a

much larger number of serious disciplinary actions are now being taken against Illinois physicians. If the rate of serious discipline in 2007-9 had been as low as in 2001-3 — 1.37 fewer serious actions per year — there would have been 59 fewer serious disciplinary actions taken against Illinois physicians per year in 2007-9 than actually occurred.

Similarly, in North Carolina, with 27,579 physicians in 2008, the improvement in the rate of serious disciplinary actions from 2001-3 to 2007-9 means that 1.77 more serious actions per 1000 physicians, or a total of 49 more physicians a year, are being seriously disciplined than in the earlier period.

## **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 second 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 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.<sup>1</sup>

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.

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

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.<sup>2</sup> 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 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 a Difference?**

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")

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<sup>2</sup> 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>.

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 Federation of State Medical Boards (FSMB) on the number of disciplinary actions taken against doctors in 2009,<sup>3</sup> combined with data from earlier FSMB reports covering 2007 and 2008, we have compiled a national report ranking state boards by the rate of serious disciplinary actions per 1,000 doctors for the years 2007-9 (See Table 1, PDF) and for earlier three-year intervals (See Table 2, PDF).

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 2007, 2008 and 2009, not the rate for 2009 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 2008<sup>4</sup> in that state. We add to this denominator the number of osteopathic physicians<sup>5</sup> 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, PDF). We then repeated these calculations for each of the five previous three-year

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<sup>3</sup> Federation of State Medical Boards. Summary of 2009 Board Actions, available at <http://www.fsmb.org/pdf/2009-summary-board-actions.pdf>.

<sup>4</sup> Physician Characteristics and Distribution in the U.S. American Medical Association, 2010 Edition.

<sup>5</sup> Fact Sheet: American Osteopathic Association. Statistics as of August, 2004, available at [http://www.osteopathic.org/index.cfm?PageID=aoa\\_ompreport\\_us#50](http://www.osteopathic.org/index.cfm?PageID=aoa_ompreport_us#50).

intervals (2001-3, 2002-4, 2003-5, 2004-6, 2005-7, 2006-8 and 2007-9; Table 2).

In previous years, we have used AMA data on non-federal M.D.s, but 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. 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 2001-2006, 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<sup>6</sup>: the ranks of 39 of the states for the 2002-2004 interval, for example, were identical to what they had been in our report for that interval issued in 2005,<sup>7</sup> 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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<sup>6</sup> 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 employees. Moreover, these physicians were disproportionately represented in a small number of states (e.g., Alaska, District of Columbia, Maryland and Hawaii).

<sup>7</sup> 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>.