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PUBLIC CITIZEN HEALTH RESEARCH GROUP

*State Medical Licensing Board Doctor Disciplinary Actions in 1987
(Latest Data Available)*

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PUBLIC CITIZEN HEALTH RESEARCH GROUP REPORT:
STATE MEDICAL BOARD DOCTOR DISCIPLINARY ACTIONS: 1987

Prompted by a spate of adverse publicity and state and federal legislation, state medical boards boosted the number of serious disciplinary actions they levied against physicians for the fourth year in a row.

The number of medical license revocations, suspensions and probations rose by 17 percent in 1987, to 1,495¹, the equivalent of 2.78 disciplinary actions for every 1,000 U.S. doctors.

Public Citizen believes those figures still aren't high enough. A physician could still operate drunk, commit a gross act of negligence or sexually assault a patient and receive a mere slap on the wrist from his or her state's medical board in most states.

We estimate that well over 100,000 Americans are injured or killed each year as a result of doctors' negligence. The absence in most states of the maximum effort to discipline these doctors is one of the most serious threats to the health of American patients.

American patients would be much more protected if every state would discipline as many doctors as West Virginia, the top state in our rankings for 1987, which had a rate of revoking the licenses, suspension or probation of 8.58 per 1,000 physicians, 19 times more doctor discipline than Kansas with only .45 actions per 1000 physicians. If all states had a rate of serious doctor disciplinary action equalling West Virginia's, the total number of M.D.'s with serious disciplinary actions in 1987 would have been 4,616, three times the number actually subject to those actions. This would mean that an additional 3,121 physicians would have been subjected to serious disciplinary action in 1987, significantly increasing the amount of protection of patients against incompetent or otherwise poorly-practicing physicians.

One bright note: During 1987 and 1988, 44 state legislatures, including those in Florida, Maryland and Illinois, enacted legislation to strengthen state oversight of physician behavior.² It remains to be seen whether those laws will provide a further push to state medical boards to take incompetent doctors' scalpels and other means of practice away.

OVERALL U.S. TRENDS

For the fourth time in the last five years, Public Citizen Health Research Group has analyzed the most recent (1987) data which state medical licensing boards forward to their national organization, the Federation of State Medical Boards. The three

types of serious disciplinary actions which we use as the basis for ranking the states are revocation of license, suspension of license and probation. A fourth category of disciplinary actions, which includes reprimands, voluntary surrender of license and a variety of other actions is not included because the Federation does not release the details as to what proportion are really serious and how many are not.

As can be seen in Table 1, in 1987, state licensing boards took 1,495 serious disciplinary actions against U.S. physicians (M.D.'s). This represented an increase of 218 such actions over the previous year or an increase of 17 percent. That rate of increase is the same seen between 1985 and 1986.

It is much smaller, however, than the improvement between 1984 and 1985, when the number of serious actions increased 344, from 745 to 1089, an increase of 46 percent.

With a total of 538,008 non-federal M.D.'s in the U.S. as of December 31, 1986, (the latest available figure)³ the average rate of doctor discipline for the country is only 2.78 serious disciplinary actions (revocation, suspension, or probation) per 1000 M.D.'s.

STATE BY STATE RANKING

The number and rate per 1000 M.D.'s of serious disciplinary actions for each state and the District of Columbia in 1987, compared to 1986, can be seen in Table 2. These rates are calculated by dividing the number of serious disciplinary actions (revocations, suspensions or probations) -- reported by each state to the Federation of State Medical Boards -- by the number of non-Federal M.D.'s in each state.

Better News

Six of the top 20 states in 1987 were not in the top 20 in 1986. These include Mississippi, South Dakota, Nevada, Delaware, North Dakota and Massachusetts.

Massachusetts continued a rapid rise in the rankings, from 39th in 1985, that came after the state passed legislation to strengthen doctor discipline in mid-1986. By 1986, the state had risen to 28th and, as of 1987, to 20th.

Other states with sizable increases in the number of serious disciplinary actions from 1986 to 1987 were West Virginia, Kentucky, Hawaii, Wisconsin, Louisiana, Washington, Michigan and Maryland.

Laudable progress has also been made in New York, the state with the largest number of disciplinary actions (though only the

15th highest rate). New York's 259 serious disciplinary actions represent a more than four-fold increase from 1985, when there were 60 serious disciplinary actions. New York's ranking went from 40th in 1985 to 16th in 1986 and, in 1987, to 15th.

New York City Council President Andrew Stein and Gov. Mario Cuomo deserve credit for focusing public attention and government resources on the discipline issue.

It should also be noted that Kentucky, Iowa, Georgia and Oklahoma have been in the top 10 states for doctor disciplinary rates for three straight years.

Worse News

At the other end of the scale, Kansas, which ranked 33rd among the states in 1986, fell to the bottom of the rankings in 1987, as the number of serious disciplinary actions it levied fell from 7 to 2. In addition, North Carolina, California, and Maine, which were not among the bottom 20 states in 1986 fell to the bottom 20 in 1987.

It is particularly sad that California, whose Board of Medical Quality Assurance was a model of doctor discipline in the late 1970's, now is apparently not putting a priority on patient safety. A recent University of California, San Diego study called physician discipline in that state "a code blue emergency," adding, "The system cannot and does not protect Californians from incompetent medical practice."⁴

Other declines were seen in Utah and Oregon -- though both remained in the top 20 -- Virginia, Ohio and particularly Indiana, where the number of serious disciplinary actions was nearly halved from 57 in 1986 to 30 in 1987.

Maintaining their abysmal rates of discipline in the bottom 10 states were Connecticut, Tennessee, and Pennsylvania.

IMPLICATIONS

Our estimate that at least 100,000 Americans are injured or killed each year by doctor negligence is based on three published studies.

The HEW Malpractice Commission estimated that 3.6 percent of all patients entering hospitals are injured and that 14.5 percent of the injuries were due to negligence.⁵ That estimate would indicate 203,000 injuries from doctor negligence in 1983.

A study of 5,612 surgical admissions at a Boston hospital showed 36 patients suffered adverse outcomes "due to error during care."⁶ Applied to all 1983 surgical admissions, that malpractice

rate would result in 136,000 injuries.

A California study found that 24,000 out of the 3 million admitted to hospitals there in one year appeared to be victims of malpractice.⁷ Applied to the entire U.S. in 1983, that would have resulted in 310,400 deaths or injuries.

Even though the 1987 total of 1,495 serious doctor disciplinary actions is better than in any previous year, it falls very short of catching most of the incompetent doctors in this country. In most states, the majority of disciplinary actions are for drug and alcohol problems, only a fraction being for incompetence.

Since there is no evidence that doctors settle in certain states depending on how competent they are, differences in the rate of doctor discipline reflect differences in how serious states are about disciplining doctors. The disparity between states with higher rates of doctor discipline and states with only a fraction of these higher rates is cause for alarm by the residents of the low-discipline states. People in these states are much more likely than people in high-rate doctor discipline states to be injured or killed by doctors still on the loose because they haven't been "caught." What might be unacceptable medical practice in one state just goes by the state licensing boards in another.

A further indication that the rate of doctor discipline by most state medical boards is too low comes from a recent Tufts University study.⁸ Those researchers found that physician-owned insurance companies terminated coverage of 6.6 out of every 1,000 policyholders in 1985 because of negligence-prone behavior, and restricted the practice or imposed other medical sanctions on an additional 7 of every 1,000 policyholders, whose performance was viewed as substandard. Thus, if the combined rates of malpractice insurance termination and other sanctions by physicians-owned insurance companies (13.6 per thousand physicians) were applied to all physicians in the U.S., this would be a rate which is almost 5 times higher than the actual rate of serious doctor disciplinary actions by state licensing boards.

DOCTOR DISCIPLINE AND MEDICAL MALPRACTICE

We continue to believe that until the rate of doctor discipline in this country significantly increases, there is no realistic possibility of a major decrease in the amount of medical malpractice. At the heart of the so-called medical malpractice crisis, other than the manipulative efforts of the insurance industry, is actual malpractice, patients being injured or killed by negligent physician behavior.

WHY IS WEST VIRGINIA NUMBER ONE IN DOCTOR DISCIPLINE?

Ronald Walton, Executive Director of the West Virginia Board of Medicine, attributes his state's success to several factors:

- 1) A new, dedicated group of board members have joined the board in the last four years. Their presence has greatly increased the visibility of the board, particularly after the State Supreme Court ruled four years ago that the Board must make all of its disciplinary actions public. The West Virginia Board of Medicine now sends press releases to local newspapers every time it disciplines a doctor. As a result, according to Mr. Walton, the board has received a much larger number of consumer complaints about questionable physicians.
- 2) The Board hired a full-time legal counsel in 1987 which enabled it to largely clean up its backlog of complaints and move forward to resolve most cases within a matter of months. Walton said, "We get a hell of a lot more done."
- 3) In addition, the Board's lone investigator noses out bad physicians by making the rounds of pharmacies throughout the state. "Pharmacists in small communities know pretty much what is going on. They know who the drug addicts are," he said.

Mr Walton also said that the number of doctor disciplinary actions taken by the Board has continued to increase in 1988 and 1989.

RECOMMENDATIONS FOR STATES

1. Increase doctor license fees to \$500 per year: all money going to finance doctor disciplinary actions. State medical boards now are chronically understaffed and underfunded; many have huge backlogs of complaints.
2. Require periodic recertification of doctors based on written exams and audits of doctor performance such as medical record review.
3. Grant subpoena power to state licensing boards to go after evidence necessary to evaluate doctors.
4. Grant state boards emergency powers to suspend a doctor's license to practice, pending investigation, when continued practice is considered to constitute a hazard to public safety.

5. Require all hospitals in your state to have a **risk management program** designed to prevent injury to patients. According to the American Hospital Association, only 60 percent of hospitals have such programs and only half of these are excellent programs.
6. Require all insurance companies to **experience-rate doctors** within subspecialties, whereby doctors with the best records pay the lowest premiums, and multiple malpractice loser doctors pay the most.
7. Require insurance companies to immediately **publicly disclose** and forward to the state licensing board the filing of malpractice claims, as well as the results of all malpractice settlements and adjudications.
8. Require hospitals or other institutions taking disciplinary actions against doctors to publicly disclose and forward to the state licensing board the details of such actions.
9. Provide immunity and confidentiality to all those reporting doctor malpractice, incompetence, substance abuse or fraud to state medical boards.
10. Provide strong consumer representation on state medical boards. Do not allow the state medical society to control membership on the boards.
11. Officials should make strong, public statements indicating a commitment to strong doctor discipline and protection of patients' safety.

TABLE 1
SERIOUS DISCIPLINARY ACTIONS
AGAINST U.S. PHYSICIANS (M.D.s)
1984-1987

YEAR	1984	1985	1986	1987
SERIOUS ACTIONS	745	1089	1277	1495
CHANGE FROM PREVIOUS YEAR	--	+345	+188	+218
PERCENT	--	+46%	+17%	+17%

1. Galusha, Bryant L. and Breaden, Dale G. Official 1987 Federation Summary of Reported Disciplinary Actions. Federation Bulletin, Sept. 1989, 275-280.
2. Intergovernmental Health Policy Project, State Oversight and Regulation of Physicians, George Washington University, Sept. 1988.
3. Physician Characteristics and Distribution in the U.S., 1987. Chicago, Ill., American Medical Association, 1987.
4. Fellmeth, Robert C., Physician Discipline in California: A Code Blue Emergency, Center for Public Interest Law, University of San Diego School of Law, April 5, 1989.
5. J. Legal Medicine, Feb. 1976.
6. New England J. Med. 1981, 304, 634-7.
7. Medical World News, July 22, 1985.
8. Schwartz, William B., and Mendelson, Daniel N., The Role of Physician-Owned Insurance Companies in the Detection and Deterrence of Negligence., JAMA, 1989; 260, 10:1342-1346.

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TABLE 2
SERIOUS DISCIPLINARY ACTIONS AGAINST M.D.S (REVOCATIONS, SUSPENSIONS
AND PROBATIONS) BY STATE LICENSING BOARD 1987

RANK 1987	RANK 1986	STATE	SERIOUS ACTIONS PER 1000 M.D.S	SERIOUS 1987	ACTIONS 1986	NUMBER OF DOCTORS
1	4	WEST VIRGINIA	8.58	29	19	3,381
2	19	ALASKA	6.91	5	2	724
3	9	KENTUCKY	6.63	41	22	6,188
4	26	MISSISSIPPI	6.15	21	8	3,416
5	11	HAWAII	5.99	15	8	2,506
6	44	SOUTH DAKOTA	5.98	6	1	1,004
7	3	IOWA	5.93	26	26	4,384
8	1	GEORGIA	5.70	60	73	10,524
9	24	NEVADA	5.37	9	4	1,676
10	7	OKLAHOMA	5.21	26	21	4,994
11	8	MISSOURI	4.90	49	38	9,996
12	18	WISCONSIN	4.87	45	26	9,234
13	34	DELAWARE	4.65	6	2	1,290
14	20	FLORIDA	4.60	128	75	27,851
15	16	NEW YORK	4.48	259	167	57,779
16	5	UTAH	4.16	13	17	3,128
17	6	OREGON	3.91	23	28	5,877
18	10	COLORADO	3.56	25	24	7,028
19	29	NORTH DAKOTA	3.52	4	2	1,136
20	28	MASSACHUSETTS	3.49	69	42	19,766
21	15	SOUTH CAROLINA	3.44	19	16	5,522
21	2	INDIANA	3.44	30	57	8,731
23	23	NEW JERSEY	3.12	59	49	18,883
24	13	MINNESOTA	2.94	28	30	9,535
25	17	ILLINOIS	2.62	67	73	25,537
26	35	LOUISIANA	2.48	21	13	8,453
27	25	D.C.	2.36	9	9	3,819
27	12	VIRGINIA	2.36	29	39	12,311
29	42	WASHINGTON	2.28	23	11	10,079
30	14	IDAHO	2.24	3	4	1,341
31	49	VERMONT	2.04	3	1	1,469
32	27	NORTH CAROLINA	1.95	23	26	11,783
33	47	MICHIGAN	1.94	34	14	17,549
34	50	NEW HAMPSHIRE	1.86	4	1	2,149
35	21	OHIO	1.79	39	58	21,744
36	48	MARYLAND	1.73	26	11	15,000
37	41	RHODE ISLAND	1.61	4	3	2,489
38	39	TEXAS	1.47	43	41	29,207
39	37	NEW MEXICO	1.46	4	4	2,735
40	38	NEBRASKA	1.45	4	4	2,762
41	51	WYOMING	1.42	1	0	706
42	30	CALIFORNIA	1.32	94	121	71,349
43	22	MAINE	1.30	3	6	2,306
44	40	ALABAMA	1.27	8	8	6,323
45	31	ARIZONA	1.23	9	12	7,303
46	45	PENNSYLVANIA	0.98	28	27	28,476
47	43	TENNESSEE	0.86	8	10	9,285
48	31	ARKANSAS	0.82	3	6	3,664
49	36	MONTANA	0.76	1	2	1,323
50	46	CONNECTICUT	0.71	7	9	9,833
51	33	KANSAS	0.45	2	7	4,460