

**Testimony of Sidney M. Wolfe MD,  
Director, Public Citizen's Health Research Group, Washington D.C.  
New Jersey Senate Health, Human Services and Senior Citizens Committee  
Hearing on Disciplinary Actions by the New Jersey Board of Medical Examiners  
April 11, 2010**

(Extensive research for our national report<sup>2</sup> and for this testimony was provided by Robert Oshel and Al Levine of the Health Research Group.)

I will address three issues:

First, details will be provided concerning the 183 New Jersey physicians whose performance was of such concern to New Jersey hospitals that the majority had serious admitting privilege actions taken against them by these hospitals. In none of these cases, however, did the New Jersey Board of Medical Examiners (NJBME) take action against them.

Second, will be a review of the performance of the New Jersey Board of Medical Examiners for the past 20 years in comparison with other state boards measured by the rate of serious disciplinary actions against New Jersey licensed physicians.

Lastly, I will discuss what could be done to improve this situation which presents a serious risk for those patients whose physicians should have been disciplined in some way by the board but were not. Other states have succeeded.

### **Inadequate NJBME Action against Physicians Disciplined by Hospitals**

Too many hospitals are, unfortunately, reluctant to discipline physicians even when such action is merited. As of three years ago, according to data from the federal National Practitioner Data Bank (NPDB), a repository of all state disciplinary actions, hospital actions and malpractice payouts against physicians, barely over one-half of American hospitals had taken even a single action against physicians with admitting privileges at that hospital at any time during the almost 20 years that the NPDB had been in operation (since September 1, 1990).<sup>1</sup>

Of an estimated 900,000 or more physicians who have practiced in the U.S. at some time during the interval from 1990 until 2009, only 10,672—barely more than one percent---have ever had a hospital action reported to the NPDB. Thus, when hospitals

---

<sup>1</sup> Public Citizen Health Research Group May, 2009 report on hospital under-reporting, available at: <http://www.citizen.org/Page.aspx?pid=585>

finally do take action against physicians, the basis for the action and the type of action are usually quite serious.<sup>2</sup>

Based on our analysis of the public use file from the NPDB, during the past 19+ years, from September 1, 1990 through the end of 2009, New Jersey hospitals have taken disciplinary actions against 320 New Jersey physicians. Although 43 percent of them have also had a disciplinary action by the NJBME, 57 percent---183---have never had any board disciplinary action despite the seriousness of what they were found to have done and the usually serious actions meted out against them by New Jersey hospitals.

129 of these 183 physicians had one hospital action, 39 had two actions and the remaining 15 physicians had between three and eight actions against them-- but none had a licensure action.

Of 183 physicians with New Jersey hospital actions but no NJBME actions, 97--- more than one-half --- had the most serious kinds of hospital actions, either terminating or restricting their admitting privileges permanently or for one year or more.

For 41 of these 97 physicians, the code stating the reasons for these serious hospital actions was "other, non-specified" and we could therefore not determine the precise reason for the hospital action. For the 56 physicians for whom this information was given, the reasons stated by the hospital were as follows:

29 physicians: unable to practice safely, incompetence, negligence, or substandard/inadequate care or skill level

17 physicians: unprofessional conduct

2 physicians: fraud

1 physician: criminal conviction

Thus, 49 of the 56 physicians (88%), for whom information was available about the exact cause of these serious hospital actions, were disciplined by the hospitals because of serious problems, which in almost all cases would adversely affect patient care. As a result, hospitals terminated or restricted their admitting privileges permanently or for one year or more. Yet, as mentioned at the outset, none of these physicians has ever been disciplined in any way by the NJBME.

---

<sup>2</sup> *State Medical Boards Fail to Discipline Doctors with Hospital Actions Against Them*, Public Citizen Health Research Group, March 15, 2011. Available at: <http://www.citizen.org/hrg1937>

Examples of four New Jersey physicians with hospital actions but no board actions include the following (their identities and those of the hospitals have been deleted in the NPDB public use file):

### **New Jersey Physician 165597**

In 2004, this physician had two different hospital actions, each resulting in a one-year restriction on admitting privileges. One was for substandard or inadequate skill level, the other for substandard or inadequate level of care. In 2006 and again in 2008 there were large malpractice payments made against the physician for 970,000 and \$940,000 respectively. The reasons were both surgery-related, the first due to the failure to order the appropriate test, the second, because of improper performance of surgery, each resulting in “significant permanent injury” to the two patients involved.

### **New Jersey Physician 210390**

In 2009, a New Jersey hospital permanently revoked this physician’s admitting privileges for a reason listed as “other” in the public use file of the NPDB. Between 2004 and 2006 there were eight malpractice payments made against this physician totaling \$2.7 million. The reasons for the payouts, seven surgery-related, one treatment related, included: four instances of improper performance, one delay in treatment and failure to recognize complication, one failure to obtain informed consent or lack of consent, and one instance of improper management, the patient in this case suffering significant permanent injury.

As the medical board saw this avalanche of eight malpractice payouts against their licensed physician, why did it take no action? The hospital finally did.

### **New Jersey Physician 212829**

In 2004, this physician surrendered admitting privileges at a New Jersey hospital for reasons not specified. Between 2006 and 2007 there were three malpractice payouts against this physician totaling \$190,000 for improper conduct, failure to recognize a surgical complication, resulting in the death of a patient and improper performance of surgery and failure to obtain informed consent or a lack of informed consent. Again, why was the strong signal of a physician surrendering admitting privileges, combined with several subsequent malpractice payouts not enough to activate the board to take some kind of action?

### **New Jersey Physician 55701**

This physician had two clinical privilege reports, one in 1994,(denial of privileges) and one in 1999 (suspension of privileges); both for an indefinite penalty length. The 1999 action was for incompetence. This practitioner also had seven medical malpractice reports totaling \$1.3 million for the period 1996-2007. The reasons for the malpractice payouts included: three cases of improper performance (surgery related), one case of improper technique (surgery-related) and a case of wrong diagnosis. Two patients had significant permanent injuries.

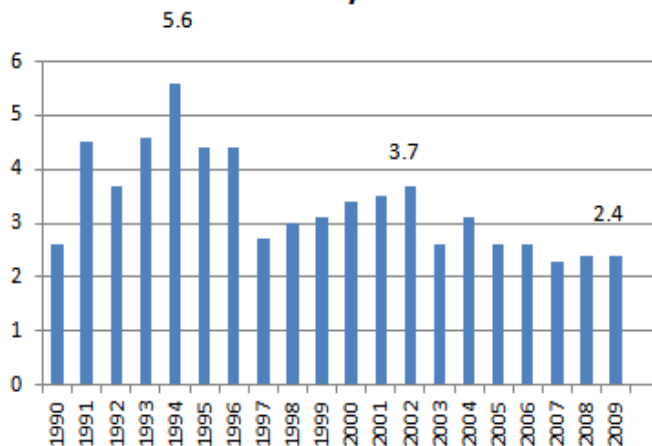
In summary, the NJBME has failed to take any action, even placing these physicians on probation, against a large number of its licensed physicians who have been found by

New Jersey hospitals to have been unable to practice safely, to have exhibited incompetence, negligence, or substandard/inadequate care or skill levels or to have engaged in professional misconduct.

### **Twenty Years of Data on NJBME ranking compared to other Medical Boards: Rates of Serious Disciplinary Actions**

The chart below shows the rate of serious disciplinary actions per 1000 physicians that we have derived from data published annually by the Federation of State Medical Boards. The definition of serious includes revocations, suspensions, surrenders and probation/restrictions.

**NJBME Disciplinary Actions:1990-2009**  
**Rate of Serious Actions per 1000**  
**Physicians**



From a peak rate of disciplinary actions of 5.6 per 1000 physicians in 1994, the rate waxed and waned, dropping to 3.7 in 2002. From that year until 2009, the latest year for which data are available, the rate fell further to 2.4 serious actions, the rate for both 2008 and 2009---a 35 percent decrease since 2002. The rank of New Jersey, compared with other state boards, went from a high of 18th and 19th in 1993 and 1994 to steadily being in the bottom half of boards since 2003, with rankings of 33rd, 29th, 35th, 40th, 42nd, 41st and 40th for the seven years from 2003 through 2009. These rankings, consistent with the downward trend in the rate of actions, add further concern to the large number of hospital-disciplined doctors without any board actions in New Jersey.

By way of comparison, Colorado has ranked among the top 10 state boards for 14 of the last 20 years (never for New Jersey), including all of the last six years. Its rate has varied over the years but it has been less than three serious actions per 1000 physicians only once in the past 20 years (eight times for NJ). During that interval, the Colorado rate has been five or greater 13 times, most recently in 2006. As shown in the above chart, New Jersey has exceeded a rate of five only once.

During this same 20 year period, the percentage of Colorado physicians with hospital action but no medical board actions was only 31.6 percent, compared New Jersey's 57.2 percent rate.

## **Recommendations**

1/ Factors affecting medical board function are discussed at the end of our annual report on medical board discipline and include:

- Adequate funding (all money from license fees going to fund board activities instead of going into the state treasury for general purposes);
- Adequate staffing including investigators and legal staff;
- Assure that well trained public members without a conflict of interest are exercising an effective role;
- Proactive investigations rather than only reacting to complaints;
- The use of all available/reliable data from other sources such as the NPDB, Medicare and Medicaid sanctions, hospital sanctions, malpractice payouts, and the criminal justice system;
- Excellent leadership;
- Independence from state medical societies—medical societies not providing the list for the governor, with doctor-friendly doctors dominating;
- Independence from other parts of the state government so that the board has the ability to develop its own budgets and regulations; and
- A reasonable legal standard for disciplining doctors (“preponderance of the evidence” rather than “beyond a reasonable doubt” or “clear and convincing evidence”).

2/ Since 1989, New Jersey has had a Medical Practitioner Review Panel, separate from the NJBME, that receives reports, including adverse hospital privilege actions, taken against physicians. The Panel does a preliminary investigation before making recommendations to the board. Your committee should request data, without doctor identifiers, concerning how many of the 183 physicians with hospital actions but no licensing actions were reviewed by the Review Panel, how many were recommended for board action and how many were acted upon by the board.

3/ Perhaps as important as any means of improving board function, in New Jersey or any other state, is ongoing oversight by committees such as yours. There are many recent examples, such as in Arizona, North Carolina and the District of Columbia wherein serious oversight hearings by state legislature committees resulted in actions, such as increased funding, that led to rapid and dramatic effects on the performance of those boards.

Thank you for inviting me to appear before your committee. You can be sure that our staff is willing to help in your efforts to improve the performance of the New Jersey Board of Medical Examiners.