

Legal Q/A

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Q: *What are the most common types of professional misconduct leading to disciplinary sanctions against physicians by the Office of Professional Medical Conduct (OPMC)?*

A: There are no fewer than 47 separate sections defining professional misconduct under the Education Law – covering everything from professional competency to improper advertising practices to fee-splitting.

We recently completed a research project in which we analyzed over 2000 disciplinary cases decided by OPMC from 1997 through 2003. The cases are readily available for review by the public at the OPMC website. In many cases, OPMC brought multiple charges of professional misconduct against physicians, but our survey results only report charges to which the physician either pleaded guilty or was adjudicated as guilty by OPMC after the conclusion of formal proceedings (although OPMC also disciplines physician assistants and specialist assistants, only a relatively few cases involves those professions).

The results of the survey were interesting and enlightening. Here's the list of the top 10 causes of OPMC sanctions (the numbers in brackets

represent the number of physicians disciplined during the period 1997-2003):

1. License revocation or suspension or similar disciplinary action from another state resulting in action against the physician's New York license (82.1);
2. Being found guilty of improper professional practice or professional misconduct by another state disciplinary action where the conduct would constitute professional misconduct in New York (55.3);
3. Practicing negligently on more than one occasion (44.1);
4. Conviction of a crime under any State or Federal law (40.4);
5. Failing to maintain medical records for any patient (32.6);
6. Practicing the profession fraudulently or beyond its authorized scope (23.7);
7. Conduct in the practice of medicine which evidences moral unfitness to practice medicine (18.6);
8. Practicing with gross negligence on a particular occasion (15.6);
9. Practicing with incompetence on more than one occasion (14.7); and

10. Willfully making or filing a false report or failing to file a report required by law or by the Department of Health or Education Department (13.8).

Other types of misconduct that resulted in relatively large numbers of disciplinary actions were: violating any term of probation or condition or limitation placed on the physician (72); habitual drug or alcohol abuse (71); willfully or negligently violating regulations affecting the practice of medicine (69); and ordering excessive tests or treatment not warranted by the condition of the patient (68).

Disciplinary sanctions for giving or receiving kickbacks (18) and fee-splitting (5) were fewer than anticipated given the amount of attention to those matters in the press and from government pronouncements.

There are a surprising number of misconduct sections under the

Education Law for which no physician was sanctioned during the period covered by our survey. Those included the willful failure to report professional misconduct of another physician; refusal to provide professional services to a patient because of race, creed, color or national origin; and violations of the New York "Stark" law.

A more in-depth analysis of our survey on OPMC sanctions will be included in an upcoming issue of the Medical/Legal Newsletter.

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