

PRESS RELEASE
May 22, 2012

Study Indicates South Carolina's Medical Board Among the Best

It begs ignorance to assume that the best schools are those that fire the most teachers. It is likewise absurd to believe that states with the most incarcerated convicts are the safest in which to live. On the contrary, states with the most prisoners have the highest incidence of crime, which is anything but a clear indication of general, public safety. These scenarios serve as an analogy to Sidney Wolfe's (director of Public Citizen Watch Group) recently released report ranking state regulatory medical boards. He presumes without any outcomes-based evidence that the practice of medicine in South Carolina is poorly regulated in as much as we are the state with the lowest incidence of serious sanctions against doctors. The supposition is counterintuitive and a prevarication at best. According to Wolfe's model, a state with a perfect score would be the one that revoked all of its doctors. His definition of serious sanctions is limited to revocation, suspensions, or probation. The South Carolina Board of Medical Examiners (the Board) is charged with the power of law to do one thing: protect the public. The authority and enforcement is imparted via two functions: licensure and discipline for misconduct. Pertaining to licensure, South Carolina is diligent in vetting its licensure applicants. All applicants undergo criminal background checks and are personally interviewed by a sitting member of the Board. Personal interviews are conducted in only one out of every six states. Indeed, every year the Board denies licensure to many applicants that hold active licenses in other states. In Mr. Wolfe's report, many of the states that did not interview the applicants rank in the higher sanction rate category. Doctors with equivocal records are less likely to seek licensure in states that require a personal encounter. Contrary to Dr. Wolfe's assertions, the only reasonable and practical deduction is that pools of higher quality doctors are less likely to be subject to a high incidence of serious sanctions. Relative to disciplinary matters, the Medical Practice Act is clear and absolute. Doctors are held accountable to its provisions. The Board's role in this regard rests on three pillars: public safety, deterrence of misconduct, and rehabilitation when possible. The deterrence for misconduct is dependent upon the licensees' full understanding that they are responsible for their actions and compliance with the code will be enforced. In South Carolina, if a doctor's license is revoked for misconduct or failure to meet the expected standards, the revoked licensee can never practice again in this state. There are no provisions for re-licensure, ever. That process is less definitive in many other states, including those that have a "higher serious sanction" rate. In many instances, doctors can simply apply for reactivation after a stipulated period of time. If a doctor believes he can simply "wait out the process" and then regain the right to licensure, the deterrence to misconduct is greatly attenuated. In the same serious context, for less egregious offenses, South Carolina physicians are still subject to published public notification, fines, and restrictive conditions that can substantially damage the doctor's reputation and livelihood.

One of the study's tenets is that those medical boards work best that are not encumbered by other state agencies. Insightful in this regard, Governor Haley appointed Ms. Catherine Templeton, Esq., and subsequently Ms. Holly Pisarik, Esq., as Director of Labor Licensing and Regulation, allowing the Board of Medical Examiners to enjoy an enhanced level of proficiency. A decentralized restructuring has given the Board an appreciated level of autonomy and control, particularly as it relates to licensure and compliance. The Board is passionately committed to its commission to protect the public,; Raison d'etre. We are keenly aware that the practice of medicine is a moral enterprise and that the efficacy of medical treatment is predicated in large part on the trust and confidence that the public places in its healthcare providers. Paradoxical to its illogical intent, this study offers a reasonable mind the "cause and effect" conclusion, based on the preponderance of the evidence, that indeed South Carolina doctors and its regulatory Board may be the best in the country.

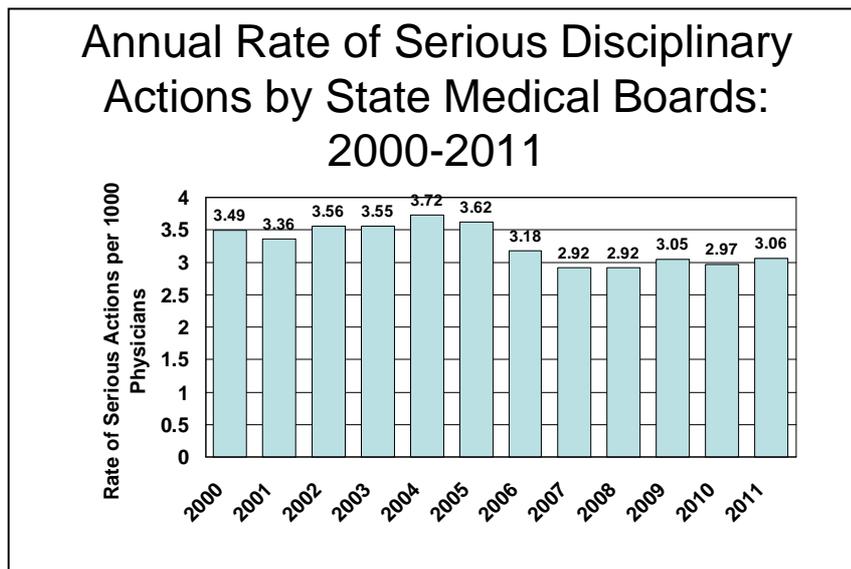
Respectfully submitted,
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Public Citizen's Health Research Group Ranking of the Rate of State Medical Boards' Serious Disciplinary Actions, 2009-2011

May 17, 2012

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Using an analysis of data released today 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 2011. This rate of serious actions per 1,000 physicians (3.06) is slightly higher than the rate in 2010 but continues to be significantly lower than the peak for the past 10 years (see figure below). The rate in 2011 alone — 3.06 serious actions per 1,000 physicians — is still 18 percent lower than the peak rate in 2004 alone of 3.72 serious actions per 1,000 physicians.



The most recent three-year average state disciplinary rates (2009-11) ranged from 1.33 serious actions per 1,000 physicians (South Carolina) to 6.79 actions per 1,000 physicians (Wyoming), a 5.1-fold difference in the rate of discipline 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 2009-11, were (starting with the lowest):

State	Actions/1,000 docs 2009-11	Times in bottom 10 since 2001-3
South Carolina	1.33	9
D.C.	1.47	2
Minnesota	1.49	9
Massachusetts	1.66	3
Connecticut	1.82	6
Wisconsin	1.90	9
Rhode Island	2.02	4
Nevada	2.07	5
New Jersey	2.26	2
Florida	2.28	4

This list includes not only small states such as Rhode Island and the District of Columbia but also large states such as Florida, New Jersey, 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 nine three-year periods. In addition, Connecticut has been in the bottom 10 states for each of the last six three-year cycles. Florida has now been in the bottom 10 boards for the last four three-year periods.

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 2009-11 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 2009-11.

As can be seen below, five states had decreases of at least 25 in their ranking of state disciplinary actions from the year of their highest rate until the latest (2009-11) rate.

States with Largest Decreases in Rank for the Rate of Serious Disciplinary Actions from Their Highest Rank to 2009-11

State	Highest rate and rank (year)	2009-11 rank	Decrease in rank
Massachusetts	23 (2004)	48	25
Missouri	6 (2006)	32	26
Idaho	14 (2003)	41	27
Montana	8 (2004)	38	30
D.C.	16 (2009)	50	34

As can be seen in the table above, Massachusetts fell 25 places in ranking from 2002-4 until 2009-11

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

The top 10 states for 2009-11 are (in order from the top down):

State	Actions/1,000 docs 2009-11	Times in top ten since 2001-3
Wyoming	6.79	8
Louisiana	5.58	4
Ohio	5.52	9
Delaware	5.32	2
New Mexico	5.28	3
Nebraska	4.70	3
Alaska	4.69	9
Oklahoma	4.65	9
Washington	4.45	1
West Virginia	4.32	2

Table 2 also shows that three of these 10 states (Alaska, Ohio and Oklahoma) have been in the top 10 for all nine 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 2009-11

State	Lowest rank and rate (year)	2009-11 rank	Increase in rank
Delaware	50 (2003)	4	46
Washington	45 (2006)	9	36
Mississippi	51 (2006)	17	34
Hawaii	51 (2003)	18	33
North Carolina	41 (2003)	16	25

**See Table 2.*

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 fourth year in a row, one of the largest states in the country, Florida, although showing some improvement, is still 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, often related to the resources available to have adequate staffing; 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

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

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 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

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>.

- 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 2011,³ combined with data from earlier FSMB reports covering 2009 and 2010, we have compiled a national report ranking state boards by the rate of serious disciplinary actions per 1,000 doctors for the years 2009-11 (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 2009, 2010 and 2011, not the rate for 2011 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 2010⁴ in that state. We add to this denominator the number of osteopathic physicians⁵ for the 37 boards that are combined medical/osteopathic boards. We then multiply

³ Federation of State Medical Boards. Summary of 2011 Board Actions, available at <http://fsmb.org/pdf/2011-summary-of-board-actions.pdf>

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.

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 states⁶: the ranks of 39 of the 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.

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 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,
2009-2011**

Table 1: Ranking of Serious Doctor Disciplinary Action Rates by State Medical Licensing Boards, 2009-2011

Rank 2009-2011¹	State/District	Number of Serious Actions, 2011	Number of Physicians, 2011^{2,3}	Serious Actions per 1,000 Physicians, 2009 – 2011⁴
1	Wyoming	12	1340	6.79
2	Louisiana	56	13767	5.58
3	Ohio	234	40569	5.52
4	Delaware	18	2858	5.32
5	New Mexico	28	5759	5.28
6	Nebraska	23	5347	4.70
7	Alaska	7	1990	4.69
8	Oklahoma	33	7619	4.65
9	Washington	109	21795	4.45
10	West Virginia	22	4922	4.32
11	Arizona	50	16944	4.12
12	Colorado	58	16787	4.08
13	Kentucky	52	11959	3.94
14	North Dakota	3	1899	3.75
15	Iowa	26	7966	3.60
16	North Carolina	83	28799	3.56
17	Mississippi	38	6511	3.56
18	Hawaii	11	5087	3.53
19	Illinois	143	44284	3.45
20	Oregon	48	13755	3.36
21	Indiana	64	16850	3.25
22	Virginia	74	26577	3.11
23	Maine	15	4426	3.05
24	New York	280	89794	2.98
25	Arkansas	18	7060	2.95
26	Kansas	26	8321	2.93
27	Maryland	92	28075	2.91
28	California	365	118110	2.86
29	Pennsylvania	123	44988	2.82
30	Texas	206	65149	2.79
31	Vermont	7	2752	2.78
32	Missouri	48	19030	2.76
33	Tennessee	39	19035	2.72
34	South Dakota	6	2244	2.71
35	Alabama	31	12051	2.69
36	New Hampshire	13	4838	2.65
37	Georgia	67	25443	2.65
38	Montana	7	2817	2.63
39	Michigan	71	29331	2.56
40	Utah	17	6865	2.44
41	Idaho	11	3504	2.43
42	Florida	171	58026	2.28
43	New Jersey	78	33991	2.26
44	Nevada	10	5899	2.07
45	Rhode Island	13	4869	2.02
46	Wisconsin	43	18160	1.90
47	Connecticut	34	15747	1.82
48	Massachusetts	53	36128	1.66
49	Minnesota	28	18721	1.49
50	District of Columbia	2	5896	1.47
51	South Carolina	20	12774	1.33

¹ Rank is calculated based upon an average of the disciplinary rates for 2009, 2010 and 2011.

² Includes osteopathic physicians for boards with jurisdiction over both physicians and osteopaths.

³ In previous reports we used nonfederal 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/nonfederal status.

⁴ Disciplinary rate for the period is calculated by averaging the disciplinary rates over the three-year period 2009-11.

RANKING OF THE RATE OF STATE MEDICAL BOARDS' SERIOUS DISCIPLINARY ACTIONS, 2001-11

Table 2: Ranks Based upon Average Doctor Disciplinary Rates over the Preceding Three Years^{5,6}

	2003	2004	2005	2006	2007	2008	2009	2010	2011
Alabama ⁷	13	17	22	26	34	36	37	31	35
Alaska ⁷	6	4	2	1	1	1	1	2	7
Arizona	2	7	6	9	4	4	5	8	11
Arkansas ⁷	29	45	39	23	16	18	32	23	25
California	22	22	23	27	36	43	41	35	28
Colorado ⁷	8	9	8	8	6	9	7	10	12
Connecticut ⁷	38	38	38	42	45	47	47	48	47
Delaware ⁷	50	50	50	44	29	23	35	13	4
District of Columbia ⁷	42	31	36	37	22	17	16	37	50
Florida	36	37	32	35	31	44	44	45	42
Georgia ⁷	15	18	20	25	33	42	36	40	37
Hawaii ⁷	51	51	42	33	21	13	10	11	18
Idaho ⁷	14	21	25	24	25	26	28	29	41
Illinois ⁷	35	25	18	12	12	15	15	20	19
Indiana ⁷	27	27	24	28	27	30	24	26	21
Iowa ⁷	12	12	15	7	11	8	13	14	15
Kansas ⁷	32	30	31	36	41	34	27	22	26
Kentucky ⁷	1	2	1	2	2	2	3	12	13
Louisiana ⁷	17	14	13	11	14	7	8	1	2
Maine	34	35	46	34	24	10	14	19	23
Maryland ⁷	48	47	44	43	43	45	43	39	27
Massachusetts ⁷	23	23	28	30	35	39	46	47	48
Michigan	40	39	40	39	40	37	39	38	39
Minnesota ⁷	47	48	49	49	50	51	51	51	49
Mississippi ⁷	20	41	51	51	49	48	45	33	17
Missouri ⁷	31	11	10	6	30	27	34	25	32
Montana ⁷	9	8	12	18	20	20	22	32	38
Nebraska ⁷	28	24	16	10	5	11	11	9	6
Nevada	33	46	47	47	46	32	29	30	44
New Hampshire ⁷	25	26	21	21	26	46	48	44	36
New Jersey ⁷	24	29	35	40	42	41	40	41	43
New Mexico	21	19	29	22	37	24	9	7	5
New York ⁷	18	16	17	17	19	19	21	24	24
North Carolina ⁷	41	34	26	16	15	14	12	16	16
North Dakota ⁷	3	3	7	19	13	6	2	6	14
Ohio ⁷	7	6	4	4	3	3	4	3	3
Oklahoma	5	5	5	5	9	5	6	4	8
Oregon ⁷	16	20	19	20	17	16	17	17	20
Pennsylvania	45	36	33	32	38	31	31	28	29
Rhode Island ⁷	46	44	37	38	23	29	30	46	45
South Carolina ⁷	43	43	45	50	51	50	50	50	51
South Dakota ⁷	37	33	43	48	47	35	26	36	34
Tennessee	44	40	30	29	28	40	33	27	33
Texas ⁷	26	28	27	31	32	33	38	34	30
Utah	10	13	14	15	10	21	25	43	40
Vermont	19	15	11	13	8	22	42	42	31
Virginia ⁷	30	32	34	41	39	28	19	21	22
Washington	39	42	41	45	44	38	23	18	9
West Virginia	11	10	9	14	18	25	18	15	10
Wisconsin ⁷	49	49	48	46	48	49	49	49	46
Wyoming ⁷	4	1	3	3	7	12	20	5	1

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 nonfederal physicians, in this report we used data for total physicians because the American Medical Association no longer provides physician data broken down by federal/nonfederal 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.