

New York State
Department of Health



Board for
**Professional
Medical
Conduct**

1997 Annual Report

**Office of Professional Medical Conduct
New York State Department of Health
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Board for Professional Medical Conduct 1997 Annual Report

Executive Summary

Public Health Law, Section 230(14) in pertinent part:

The board shall prepare an annual report for the legislature, the governor and other executive offices, the medical profession, medical professional societies, consumer agencies and other interested persons.

The Board for Professional Medical Conduct, through the New York State Department of Health's Office of Professional Medical Conduct (OPMC), investigates complaints made against physicians and physician assistants, and prosecutes those charged with misconduct. Investigations that reveal evidence of physician misconduct are referred to a committee of the State Board for Professional Medical Conduct, which hears the evidence in the case and makes the final decision concerning the charges and, if appropriate, imposes a penalty.

The Board and OPMC can look back with particular satisfaction on 1997 as a rewarding and productive year. In part fueled by additional resources provided by the physician registration fee increase, the Board had an increased ability to respond to public need. Staff and support capabilities were increased, enabling us to cope with a growing demand for quality health care and accountability. Public outreach was enhanced through a World Wide Web Site, an 800 telephone number and publications by the Board. Under the guidance of a new Chair, new Board subcommittees rejuvenated a variety of Board activities. The annual meeting of the Board was well received and capped a successful year. Progress was in part measured by the aggressive response to a 12% increase in complaints received. Almost 2000 more case investigations were completed and serious disciplinary actions increased almost 10% over the previous year.

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Increased Resources

The Office of Professional Medical Conduct has benefitted greatly from legislation passed in 1996, which increased the physician biennial license registration fee from \$330 to \$600. The increased revenue, dedicated to the process of physician discipline, is responsible, in part, for the following important accomplishments:

- **Increased Number of Disciplinary Actions:** A record number of final disciplinary actions were taken in 1997. The 342 actions represent a 9% increase over the year before.
- **Increased Number of Investigations Completed:** Nearly 2,000 more case investigations were completed in 1997 than the year before.
- **Increase in Staff:** Increased funding was used to hire additional investigative staff, including nurse investigators, and legal staff. The new positions have made it possible for the Board and its staff to speed case resolution and improve administrative operations.
- **Computer Services:** New equipment and software development have resulted in increased productivity. An accelerated computer training program has been initiated to ready staff for a new electronic case management system (Lotus Notes), planned for full activation in 1998.
- **Case Management System:** The new system integrates all of the essential elements in an investigated case, providing an easily retrievable case profile. Complex written reports and other important case information, from hospital reports to memos, can be stored electronically for quick access. Lotus Notes will speed staff's ability to respond to questions about case status by allowing users to track case progress from opening to final disposition.

Public Outreach

The Office of Professional Medical Conduct takes a national leadership role in outreach efforts to inform the public of disciplinary actions involving physicians and how to file a misconduct complaint. These include:

- **World Wide Web Site:** Since 1996, our WWW site (<http://www.health.state.ny.us/nysdoh/opmc/main.htm>) has provided the public with easy access to information about disciplinary actions taken against physicians. In addition to our Annual Reports, the site contains a list of responses to "Frequently Asked Questions." The public can also obtain the OPMC Complaint Form via the Web site. Questions and comments also can be directed over the Internet. The OPMC Web site, which provides

information on disciplinary actions and also links to the State Education Department's site, receives over 4000 "hits" per week.

- **800 Number:** A toll-free telephone number (1-800-663-6114) provides the public with convenient and affordable access to OPMC staff to receive information or file a complaint. The new number has been publicized both on the Internet and in OPMC brochures. Phone calls to the Intake Unit have increased dramatically, and staff now process approximately 3,000 inquiries each month.
- **Access to Patient Information:** A special unit within OPMC works to investigate and resolve complaints concerning patients' access to their medical records. Staff assists in resolving disputes concerning patient access and also enforces the law governing physicians' responsibilities to provide access to such information. The unit receives up to 200 calls monthly.
- **Publications:** OPMC produces informational brochures to help the public and physicians understand the function and roles of OPMC. These brochures include topics such as "How to Choose the Right Physician," "Understanding New York's Medical Conduct Process," "Fraud in Medicine," and "Access to Patient Information." Soon to be published is a folder concerning "Physician Sexual Abuse."

In addition, OPMC has had numerous articles published in the Medical Society of the State of New York's newsletter which focus on such issues as the education of physicians, establishment of the Access to Patient Information Unit, physician impairment and summaries of important OPMC case outcomes.

Board Activities

- **New Board Subcommittees:** Six new subcommittees of the Board were established by the Chair. These committees, Board Education, Annual Meeting Planning Committee, Bylaws and Legislation, Physician Sexual Misconduct Policy, Fraud in Health Care, and Board Development, have significantly expanded the scope and activities of the Board. Subcommittees that have completed their work and have been phased to an inactive status are Fraud Implementation Plan, Impaired Physicians, Physician Sexual Misconduct, and Summary Suspension Subcommittees.
- Expectations for participation in Board activities by Board members have been promulgated. These include availability and/or service on hearing and other disciplinary committees, participation on ad hoc operational committees, and an expectancy of attendance at the Annual Meeting.
- Strategies for eliminating delays in scheduling and completing hearings are being aggressively pursued. Board hearing panels now receive a prehearing packet of information to facilitate the smooth organization and planning of the hearing.
- The time lines of hearings have been monitored and critiqued in order to call the attention of the panel and Administrative Law Judge (ALJ) to delays in our process and make constructive suggestions to speed up our hearings.
- OPMC hosted a meeting of the North American Coalition for Personalized Assessment and Continuing Medical Education (NACPACME) September 26-27, 1997 in New York City. This organization addresses issues involving the assessment and reeducation of practicing physicians. Attendees included participants from numerous states and Canada. Several members of the Board who are active on NACPACME committees attended the meeting. It should be noted that our Board and OPMC were among the pioneers in such physician retraining.
- Members of the Board served on several ad hoc committees which recommended policy to the NYS Commissioner of Health. These included the Public Health Council's "Ad Hoc Committee on Pain Management," assessing the standards and guidelines for treatment of chronic pain, and a committee on "Quality Assurance in Office-based Surgery," evaluating the standards that are to guide physicians in their current shift from Article 28 facilities to office settings in the surgical management of patients.

- The Annual Meeting, held November 14-16, 1997, capped what has been an exceptional year for the Board and OPMC, with attendance at its highest. A review of the fundamentals of our process was well received.

Program Activities

- **Medical Expert Program:** Recognizing the critical importance of medical experts in case resolution, OPMC's Medical Expert Program was enhanced and expanded during the year. A full-time nurse coordinator was appointed who will assist in developing new expert recruitment strategies, establish training and credentialing requirements, and design methods of assessing the work submitted by medical experts.
- **Case Management System:** A statewide system for tracking all active cases was incorporated into a computer data base. Serious and high profile cases are tracked monthly. Discussion with staff concerning management of each case has led to more efficient and rapid case resolution.
- **Computer Networking:** OPMC staff are now being trained in using the new computer system, Lotus Notes. This innovative office system allows staff to integrate their work closely with one another and simplifies the exchange of documents, on-line reports and shared resources.
- **Regionalization:** The Area Offices of Rochester and Buffalo have been combined into the Western Area Regional Office, and the Area Offices of New York City and New Rochelle have been merged into the Metropolitan Area Regional Office. Each regional office is under the leadership of one Program Director.

Peer Review

Physicians are involved in every stage of the discipline process, from assessing the initial complaint to hearing the appeal of a disciplined physician. OPMC has 24 full- and part-time staff physicians. These physicians work with investigators, many of whom are nurses, to evaluate allegations of misconduct. A wide spectrum of medical specialties is represented by the OPMC roster of medical coordinators.

Substantial progress has been made toward the goal of involving attorneys early in the investigative process in designated cases. Additionally, in certain cases, selected staff, usually a medical coordinator, have continued to assist counsel in formulating charges and hearing the case. This integration is being expanded and further developed to speed case resolution.

General Program Information

Board for Professional Medical Conduct

The State Education Department was originally responsible for the licensing and disciplining of physicians in New York State. The State Legislature divided the process between the Education and Health Departments in 1976. The Health Department and the Board became responsible for investigating complaints and holding hearings. However, the Education Department and the Board of Regents, that department's governing body, formerly made the final decisions in all discipline cases. In 1991, the state disciplinary process was again changed by the Legislature. The Regents and the Education Department were removed from the disciplinary process and the responsibility was given solely to the Board and the Health Department. There still exists the unique dichotomy in New York State of one department, the Department of Education, issuing licenses, and another department, the Department of Health, disciplining, including the revocation of licenses of physicians and physician assistants. It is further noted that all other health care professionals (e.g., nurses, dentists, podiatrists) are both licensed and disciplined by the Department of Education.

The Board for Professional Medical Conduct was created by the same legislation that divided the disciplinary process between the Education and Health Departments. Members represent a wide spectrum of the state's physicians and lay citizens. The Board serves as a key resource in the state's disciplinary process and strives to make the process more responsive to the needs of both patients and physicians.

Physician members of the board are appointed by the Commissioner of Health, based largely on recommendations made by medical and professional societies. Lay members are appointed by the Commissioner of Health with the approval of the Governor. By law, the Board of Regents may appoint 20 percent of the membership of the Board. Efforts are made to maintain a ratio of two physicians to one lay member on the Board. The makeup of all disciplinary committees replicates this 2:1 ratio.

Members of the Board fulfill several major roles in the disciplinary process. They serve on investigation, hearing and restoration committees and on the Administrative Review Board. In addition, Board members may serve on a variety of subcommittees which address procedural and emerging policy issues.

The roles of the Board and the OPMC are delineated in Public Health Law 230. The definitions of misconduct are found in Sections 6530 and 6531 of the Education Law.

Office of Professional Medical Conduct

The Office of Professional Medical Conduct (OPMC) provides staff to carry out the mission and objectives of the Board. Its mission is to protect the public through the investigation of professional discipline issues involving physicians and physician assistants. Through its disciplinary and monitoring activities, OPMC strives to deter professional misconduct and promote and preserve standards of medical practice.

OPMC:

- investigates all complaints;
- with assistance of Counsel, prosecutes physicians formally charged with misconduct;
- monitors physicians whose licenses have been restored following temporary surrender due to incapacity by drugs, alcohol or mental impairment and oversees the contract with the Medical Society's Committee for Physicians' Health (CPH), a non-disciplinary program to identify, refer to treatment and monitor impaired physicians;
- monitors physicians and physician assistants placed on probation as a result of disciplinary and nondisciplinary actions.

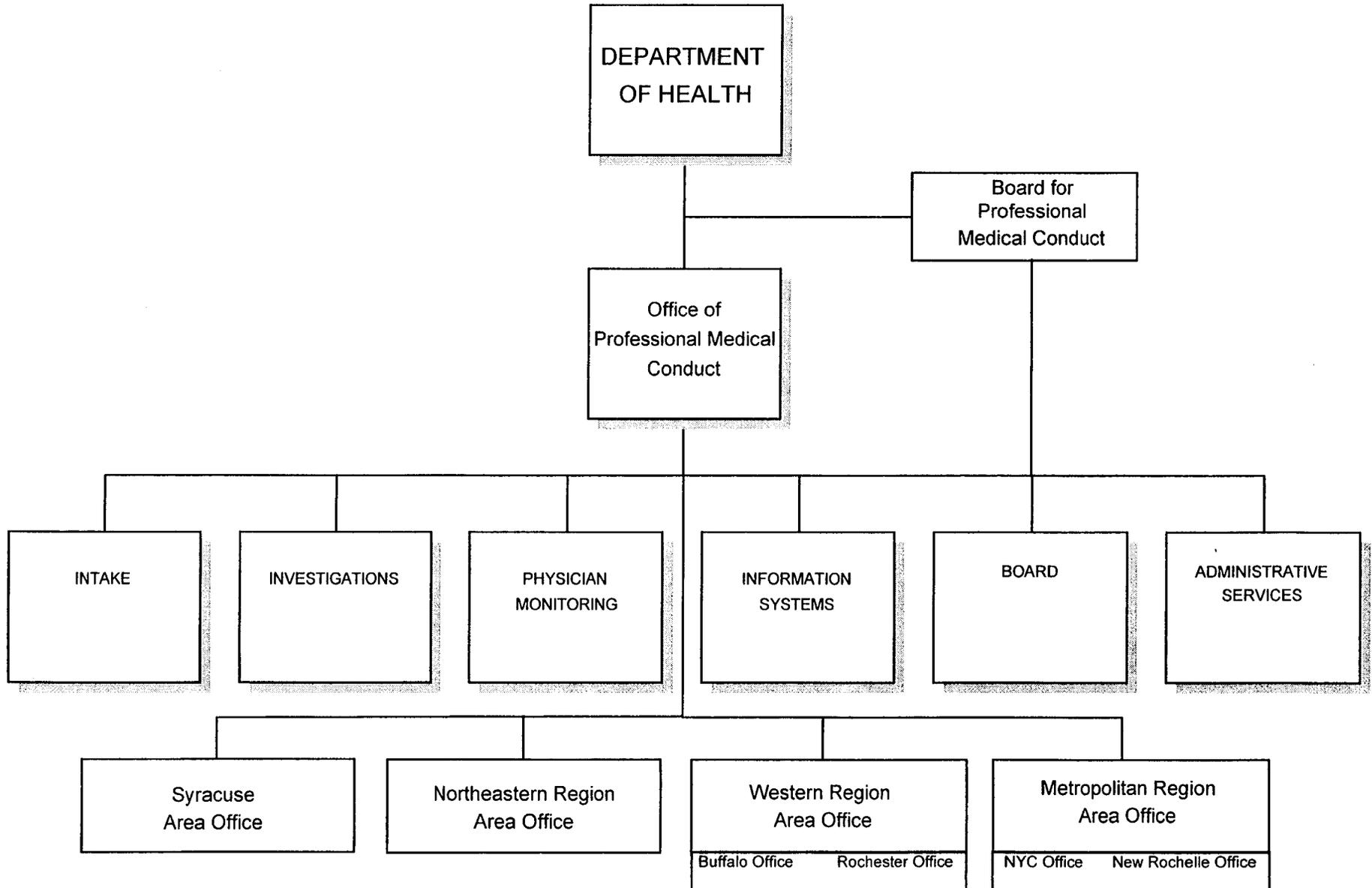
The Disciplinary Process

Steps in the Disciplinary Process

- Complaints are received in the central office by the central intake unit, are screened and either resolved in the intake unit or referred to the complaint resolution unit for further investigation. Cases requiring more intense investigation are sent to the appropriate field office.
- Cases in which investigative staff have found evidence that may support charges of misconduct are presented to an investigation committee of the Board, consisting of two physicians and a lay person. The committee can recommend a hearing, an administrative warning or consultation, dismiss the case, request additional investigation or recommend that the Commissioner of Health summarily suspend the physician's license if the physician is deemed an imminent danger to the public. The committee can also recommend acceptable parameters for a consent agreement to help speed settlements. The recommendations are acted upon by the Chair and the Director of OPMC in consultation with the Executive Secretary.
- Cases voted to hearing are assigned to Department of Health attorneys who review the cases and prepare charges. Consent agreements within previously recommended parameters may be sought to resolve cases without the need for a hearing.

- If a consent agreement has not been recommended or cannot be reached, a hearing panel consisting of two physicians and one lay person is drawn from the Board. A chairperson is appointed. This panel, assisted by an administrative law judge, hears the case, reviews the evidence, renders a decision and assesses a penalty. The penalty can range from dismissal of charges to suspension or revocation of a license.
- Either the state or the respondent physician can appeal a hearing committee's decision to the Administrative Review Board (ARB). This standing committee, consisting of three physicians and two lay members drawn from the Board, serves as the final internal administrative remedy available for the state and the physician. Once the appeal is properly requested, the ARB must render a decision within 45 days.
- The determination of the hearing panel or the ARB may be appealed outside the OPMC process by means of an Article 78 proceeding to the Appellate Division, Third Department.

Office of Professional Medical Conduct Organizational Structure

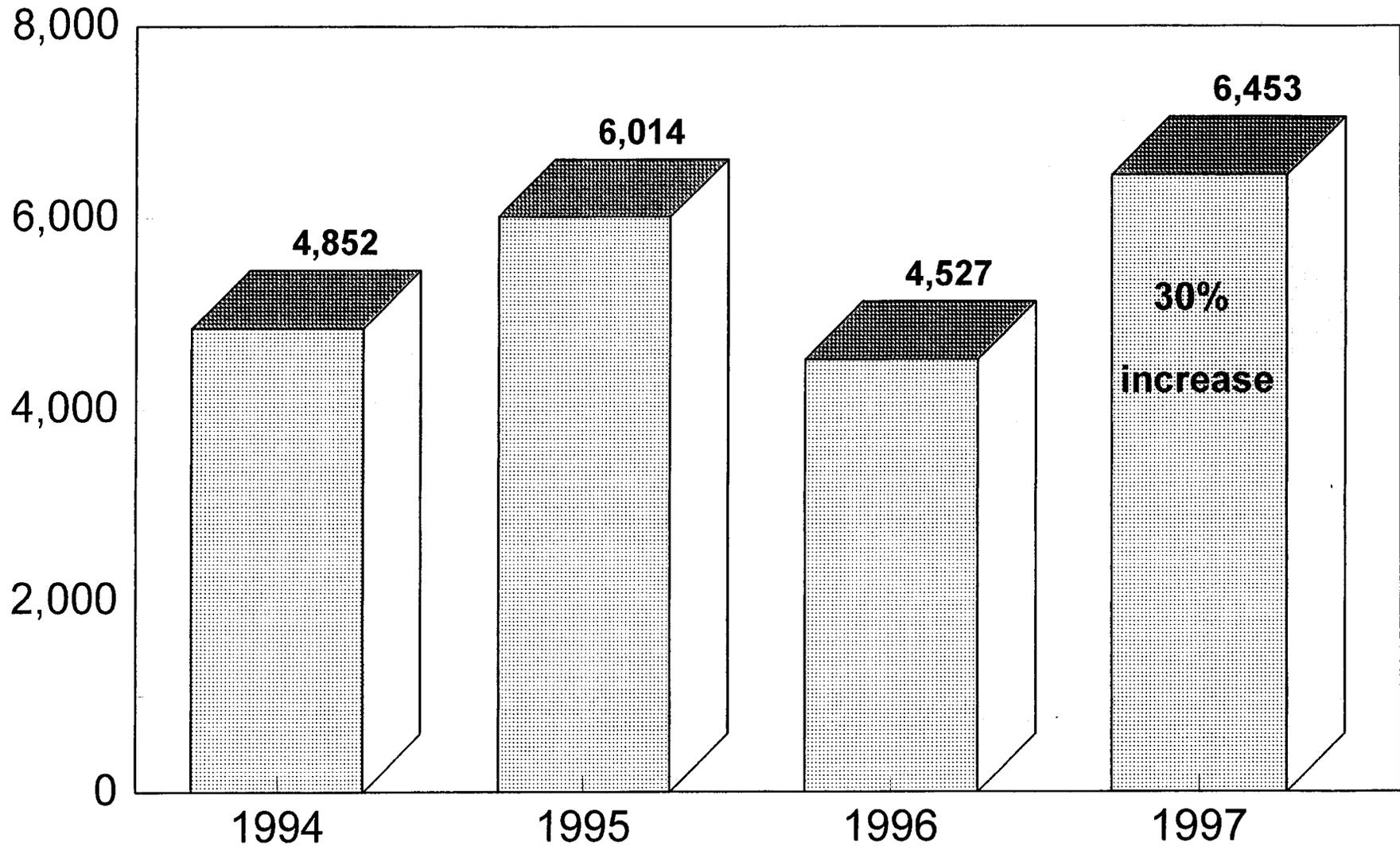


Summary Statistics

	1996	1997
Complaints Received	5151	5782
Cases Closed	4527	6453
Administrative Warnings/Consultations	90	126
Summary Suspensions	10	12
Monitoring Agreements	6	6
Temporary/Permanent Surrenders	23	23
Disciplinary Actions		
Surrender	97	93
Revocation	87	81
Suspension	88	92
Other	39	76
Total Disciplinary Actions:	311	342

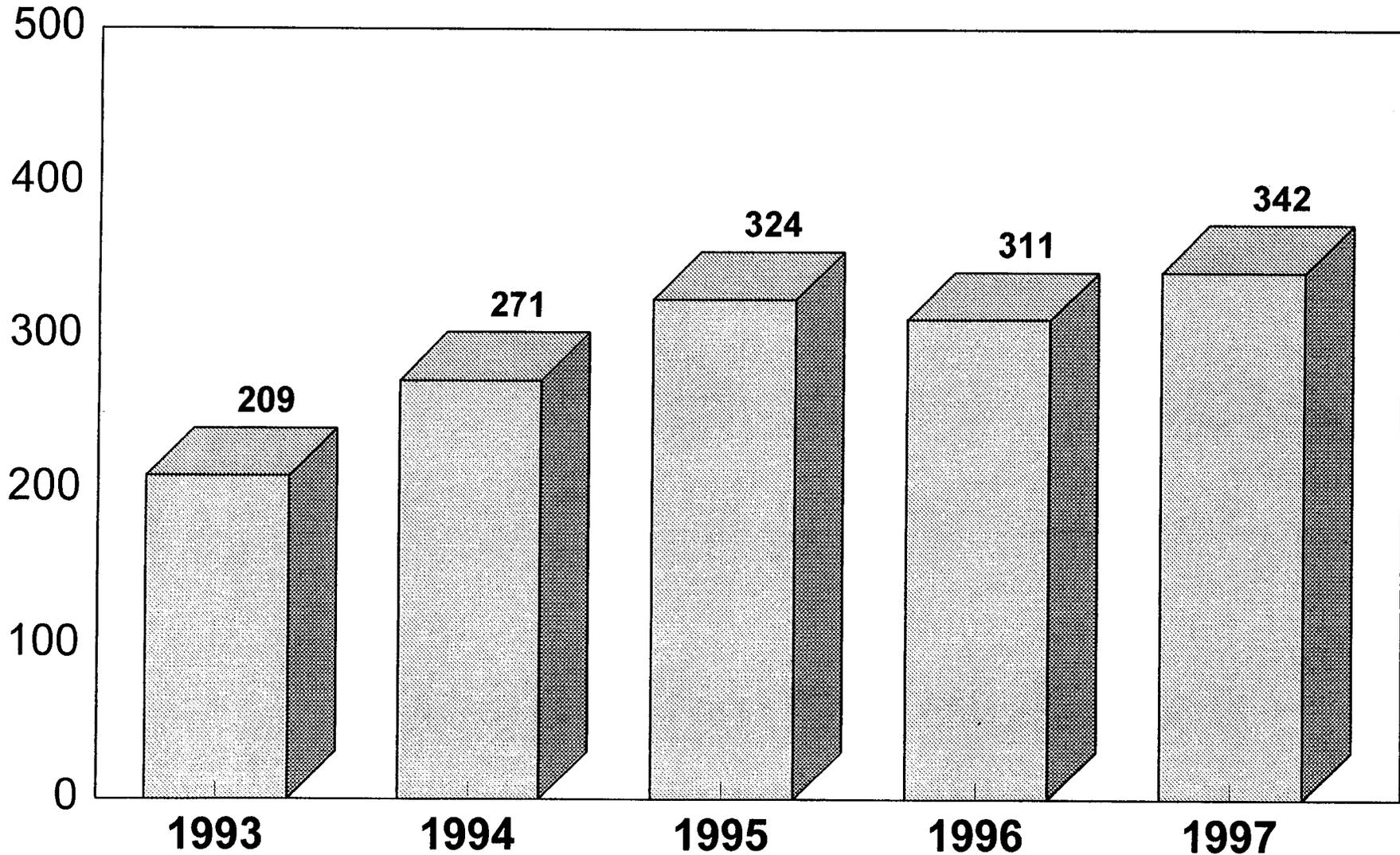
Office of Professional Medical Conduct

Investigations Completed



Office of Professional Medical Conduct

Final Disciplinary Actions



Decisions by the Board for Professional Medical Conduct 1997

