



UNDERSTANDING MEDICAL REGULATION IN THE UNITED STATES

Module 1: An Introduction to Medical Regulation

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The role of state medical boards in the United States.

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As a new or incoming member to a state medical board, there is much to learn about the structure and function of medical regulation in your state.

This presentation is intended to supplement the background and orientation materials you may receive from the medical board on which you will serve. This presentation outlines basic elements of medical regulation that will help prepare you to interact effectively and professionally with your colleagues on the board.

Our goal in this module will be to help you understand broadly the role of state medical boards and the work they do in the United States.

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Unlike many countries with centralized or national oversight of medical practice, the United States uses a state-based system for medical regulation. This is not by accident.

The 10th Amendment of the United States Constitution authorizes the states to establish laws and regulations protecting the health, safety and general welfare of their citizens.

Thus, it is the responsibility of the individual states to regulate the practice of medicine.

Rather than being seen as an inherent right of an individual, the ability to practice of medicine in the United States is considered a privilege granted by the government of a state acting through their elected representatives.

With this constitutional definition in place, each of the 50 states, the District of Columbia and the U.S. territories have enacted laws and regulations that govern the practice of medicine and outline the responsibility of state medical boards to regulate that practice within their borders.

The ultimate goal is to foster the professional practice of medicine and protect the public from unprofessional, improper and incompetent actions.

This guidance is outlined in a state statute, usually called a Medical Practice Act.

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Now let's stop for a moment and ask a question: How many state medical boards do you think there are in the United States?

There are actually 70 medical boards authorized to regulate medicine in the United States. This number may seem unusually high but there are reasons for it.

To begin, there is at least one medical board in each of the 50 states and the District of Columbia.

Additionally, in 14 states there are actually two boards issuing a medical license. In these states, separate allopathic – or M.D., and osteopathic – or D.O., boards exist for licensing physicians presenting the M.D. and D.O. degrees.

This number is further supplemented by the medical boards licensing and disciplining physicians in the various territories of the United States, such as Puerto Rico, the U.S. Virgin Islands, Guam, and the Northern Mariana Islands.

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All state medical boards issue licenses for the general practice of medicine.

State licenses are undifferentiated, meaning physicians in the United States are not licensed based upon their specialty or practice focus, and certification in a medical specialty is not absolutely required in order to obtain a license to practice medicine.

In many states, other health care professionals are also licensed and regulated by medical boards in addition to physicians. Examples include physician assistants, podiatrists, chiropractors, and acupuncturists.

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In addition to licensing physicians and others, state medical boards investigate complaints, discipline those who violate the law, conduct licensee evaluations and facilitate rehabilitation of licensees when appropriate.

State medical boards also adopt policies and guidelines related to the practice of medicine and designed to improve the overall quality of health care in the state.

Overall, state medical boards regulate the activities of nearly one million licensed physicians in the United States.

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The boards are a vital part of our health care system and do a remarkably effective job in keeping patients safe and ensuring quality in medical care.

How did this system evolve? It is useful to understand just a few basics about the history of medical regulation.

Attempts to regulate and license medical practitioners date to the colonial era. These early laws were haphazard and often unenforced. Most of the laws regulating the practice of medicine disappeared by the 1830s before re-emerging after the Civil War (1861-65) as the basis for modern medical regulation

One milestone in this development was the establishment of state medical boards. The North Carolina Medical Board, established in 1859, is the oldest continuously operating board in the United States

A critical development among the early licensing boards was the creation of the Illinois Board of Health in 1876. It established the template for the modern state medical board.

The Illinois legislature created the board with a broad set of powers consistent with those of state medical boards today. These included setting minimum qualifications for the practice of medicine, issuing a medical license to physicians and revoking or rescinding a physician's medical license.

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Medical licensing laws spread throughout the United States in the last quarter of the 19th century, but they were not uniformly popular, especially among some physicians already in practice at the time such laws were introduced.

One important legal challenge came from a West Virginia doctor named Frank Dent.

Dent had been in medical practice with his father and on his own for over a decade prior to the adoption of West Virginia's licensing law. In 1882, a local court convicted Dent of illegally practicing medicine because he did not hold a medical license as a graduate of a "reputable" medical school.

Dent challenged this finding and his case reached the US Supreme Court in 1889.

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In reaching its decision in *Dent v. West Virginia*, the Supreme Court had to balance two fundamental constitutional principles.

The first was the right of the state of West Virginia under the 10th amendment to regulate an occupation in the interests of the public health. The second was Dr. Dent's due process rights, protecting an individual employed in a lawful occupation – like medicine -- against arbitrary decisions.

The Supreme Court ruled in favor of West Virginia.

In reaching its decision, the Court acknowledged the "right" of citizens, including Dr. Dent, to engage in their "lawful...profession." However, the Court found this was not an unlimited right and that the state might impose reasonable restrictions, requirements or conditions.

The Court believed such restrictions were especially appropriate in the case of medicine, as it noted the "careful preparation," "skill" and "learning" required of physicians for the "protection of society."

This seminal case upheld the power of state medical boards to regulate the practice of medicine within their jurisdiction and led the way for the growth and reach of state medical boards as they exist today.

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The structure and authority of state medical boards vary from state to state. Some boards are independent and maintain all licensing and disciplinary powers, while others are part of a larger umbrella agency, such as a state department of health, exercising varied levels of responsibilities or functioning in an advisory capacity.

State medical boards are typically made up of volunteer physicians, physician assistants, other health care providers and members of the public who are, in most cases, appointed by the governor. In recent years, non-physician board members — often referred to as “public members” — have become common. The vast majority of boards in the United States now have public members.

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The state legislature determines the financial resources of most boards. Funding for medical board activities comes from licensing and registration fees for physicians, physician assistants and other health providers, and/or state budget appropriations.

Most boards employ an administrative staff that includes an executive officer, attorneys, investigators and licensing specialists. Some may also have communications or policy specialists. Some boards share staff — such as investigators and attorneys — with other state regulatory agencies.

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As we noted earlier, every state and territory in the United States has existing law addressing the main elements behind the practice of medicine. This legislation is generally referred to as the Medical Practice Act for that state.

In your work as a state medical board member, the Medical Practice Act will be one of your most important tools – helping you make decisions on a wide variety of issues. You should become very familiar with it.

Just like the legislative template for the Illinois board written over a century ago, your state’s Medical Practice Act defines the practice of medicine, creates a legally constituted state medical board, sets standards and qualifications for licensing physicians, defines unprofessional conduct, and establishes a mechanism for taking disciplinary action against licensees involved in unprofessional conduct.

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Though the practical elements of medical regulation can seem complex, the general purpose and mission of every state medical board is clear. It can be summed up in two words: Public Protection.

This means that the role for all members of the state medical board is to regulate keeping the best interests of the public in mind -- not the interests of the medical profession or other health providers.

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There are basically three functions for state medical boards: Licensing, discipline and regulation.

Licensing is the function that probably first comes to mind when thinking about state medical boards, but the disciplining of physicians -- when called for – is often the most time- and resource-intensive activity for boards.

Sometimes a patient comes away from an interaction with their physician or other health care provider feeling they have been wronged in some capacity; they may choose to file a complaint with the state medical board. Individual boards receive hundreds, even thousands, of complaints annually.

These must be evaluated to determine if they fall under the board's legal purview. An investigation may be necessary to ascertain basic facts behind the complaint. A series of steps is then involved, leading in some cases to hearings, adjudication and disciplinary steps – which may include revoking the license of the physician or health care provider involved.

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In addition to licensing and discipline, state medical boards have a responsibility for regulating the ongoing practice of medicine by physicians and others.

Regulation includes making rules that carry the force of law and clarify statutory provisions of the Medical Practice Act, such as investigative or licensing processes.

It also includes developing policies that clarify expectations and provide guidance to licensees on best practices or specific medical activities.

These may include guidance or best practices on a wide range of activities -- from opioid prescribing to office-based surgical procedures.

It is important to note the difference between regulations and guidelines: Regulations represent a minimum standard and must be followed, with the force of law behind them, while guidelines are optional – and should be followed. This is a key distinction.

Boards often play an ongoing role in physician education. The license renewal process in the vast majority of states requires physicians to document continuing medical education – known as CME -- with the board often identifying specific content areas.

And almost every state board plays a role in what is known as physician rehabilitation – that is, they help physicians who are having personal or professional problems that might interfere with their ability to practice medicine address those problems, working with organizations known as physician health programs, or PHPs.

We will cover licensing, discipline and regulation in much more depth in other modules.

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One final aspect to keep in mind about the work of state medical boards is their increasingly important role as a repository of publicly available information about the physicians, physician assistants and other health practitioners they license. This information can be useful to boards in other states and to consumers in helping them choose a physician when they need medical care.

Boards make available a variety of physician information on their individual state websites through online “physician profiles.”

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At a minimum, medical board profiles include licensure status and disciplinary history. More comprehensive profile systems may include full board orders of disciplinary actions, malpractice judgments and criminal convictions.

All state medical boards also engage in an ongoing, cooperative effort to share licensure and disciplinary information with one another by regularly contributing data to a national database maintained by the FSMB. This helps ensure that information about physicians is available everywhere and helps prevent disciplined doctors from practicing undetected across state lines.

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As you can see, medical boards provide value for both patients and physicians.

By following up on complaints and disciplining physicians when needed, medical boards ensure public trust in the basic standards of competence and ethical behavior in their physicians and other health care practitioners. By striving to ensure that physicians have been properly trained and are maintaining their professional skills, medical boards help protect the integrity of the medical profession.

None of this can happen, however, without the work of dedicated and committed members of state medical boards. Their work as public servants is essential to the safe practice of medicine in the United States.

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This concludes Module 1 – an Introduction to Medical Regulation.

Take some time now to learn more about the specifics of medical regulation in your state, including:

- The key components of your state's Medical Practice Act.
- The composition of your state medical board, including the number of public members.
- How your state board is staffed.
- What professions your state board is responsible for licensing, disciplining and regulating.
- What kind of information is available from your state board about the health care professionals it licenses.
- The number and nature of complaints about health care professionals your board receives each year.

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For more information, you can refer to these additional resources.

- U.S. Medical Regulatory Trends and Actions, 2016 (Available at www.fsmb.org)
- Essentials of a State Medical and Osteopathic Practice Act (Available at www.fsmb.org)
- David Johnson, Humayun Chaudhry. Medical Licensing and Discipline in America: A History of the Federation of State Medical Boards. (Lanham, MD: Lexington Books, 2012)
- James Mohr, Licensed to Practice: The Supreme Court Defines the American Medical Profession (Johns Hopkins, 2013)
- Ruth Horowitz, In the Public Interest: Medical Licensing and the Disciplinary Process (Rutgers University Press, 2012)

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More educational modules are available at www.fsmb.org.

Thank you for your participation!

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