

Position Statement on Duty to Report

*Adopted as policy by the Federation of State Medical Boards
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In order for state medical boards to fulfill their mission to regulate the medical profession in the interests of patients, it is essential that they are equipped with all relevant information that allows them to operate effectively. Some of the information that is pertinent to patient safety and protection is not immediately available to state medical boards in the course of their existing programs and functions. As such, boards rely upon other individuals and entities to submit this information, as necessary.

A sample of relevant categories of information includes patient safety issues and events, observed impairment, incapacity or incompetent performance, and instances of professional misconduct, including but not limited to child abuse, sexual misconduct with patients or surrogates, controlled substance diversion, fraudulent billing, and other disruptive behavior.

All of these categories of information include instances of harm to patients, or circumstances that have a high risk of leading to patient harm. In addition to the oft-cited professional obligation to “do no harm,” physicians also have various responsibilities to patients that fall under the ethical principle of beneficence. These involve promoting the best interests of patients by preventing harm from occurring to them and by removing conditions that will lead to their harm. The duty to report is a fundamental way in which physicians and others can fulfill duties of beneficence by removing potentially harmful conditions.

While responsibilities to report this information to state medical boards and other relevant parties are outlined in state medical practice acts and other legislation, the Federation of State Medical Boards (FSMB) wishes to highlight the importance of reporting relevant information to the state medical boards themselves. In a system that protects the public and that is complaint based, it is imperative that state medical boards have access to the information necessary to fulfill their duties of beneficence. Peers, the public, hospitals, and insurers support the fulfillment of these duties by reporting instances of professional misconduct or incompetence to state medical boards.

In its *Essentials of a State Medical and Osteopathic Practice Act*, the FSMB provides sample language that addresses a wide variety of infractions and the related reporting responsibilities. In addition to physicians’ duties to report any actions against their own licenses or hospital privileges, the *Essentials* outlines duties that reside with other physicians and organizations to report, or cause a report to be made, to the state medical board anytime there is evidence or information that appears to show that a physician is incompetent, guilty of negligence, guilty of a violation of the medical practice act, engaging in inappropriate relationships with patients, is mentally or physically unable to practice safely, or has an alcohol or drug abuse problem. The *Essentials* further states that these same duties exist on the part of hospital or health organization chief executive officers, medical officers, and medical staff. This is in addition to their duty to report to the state medical board any adverse action taken by a health care institution or peer review body.

Despite similar language being included in most states' medical practice acts, there is evidence that demonstrates that reporting often does not occur. Campbell and colleagues found in a survey of 3504 physicians that while "96% of respondents agreed that physicians should report impaired or incompetent colleagues to relevant authorities, 45% of respondents who encountered such colleagues had not reported them."¹

With respect to institutional reporting, the FSMB has heard complaints from its member boards that hospitals and health organizations regularly ignore reporting requirements, find ways to circumvent them, or provide reports that are too brief and general to equip the board with relevant information for carrying out its regulatory functions. Boards have reported having to resort to subpoenaing hospital medical directors, threatening disciplinary action to obtain information, and resorting to civil sanctions. In some instances, failures to report by physicians and hospitals have resulted in additional avoidable adverse events to patients.

An inability to report anonymously in some jurisdictions or health organizations may inhibit physicians and members of the public from making reports. This may also force physicians who choose to make reports to take reputational risks and jeopardize interprofessional relations. While physicians and hospital administrators are encouraged to adhere to the relevant legislation in their jurisdictions and fulfill their professional duty to report, the ability to make anonymous complaints and avoid being identified during hearing processes contributes to a culture that encourages reporting of adverse events and clinical conditions. As such, state medical boards and hospital administrators should work to ensure that appropriate protections are in place to enable physicians and patients to complain anonymously. Where allowing anonymous complaints is impossible or infeasible due to concerns about facilitating the ability to make nefarious, frivolous, or vexatious complaints, it is essential that complainants' identities remain confidential and that licensees who have a complaint before the board be discouraged from attempting to contact complainants.

¹ Campbell, EG, et al., *Annals of Int Med* 2007;147(11) 795-802