Commentary

Why Don't We Know More About Best Practices in Physician Investigations?

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IN BRIEF **Dr. Ziegler calls for a systematic analysis of both the structure and process of state medical board investigations in an effort to determine best practices and model policies for this key aspect of medical regulation.**

One of the most important functions of state government is to protect the health, safety, and welfare of its citizens. In medicine, state medical and osteopathic boards play a key role in safeguarding patient safety and medical quality by licensing physicians and conducting post-licensing oversight of those admitted to practice.

Despite these important responsibilities, however, financial resources from state government are extremely limited. Moreover, some post-licensing functions are more costly than others. In fact, the investigative process, which plays a key role in conducting post-licensing oversight and physician discipline, may consume well over half of a board's annual budget. While standardization of practices in medicine and industry have increased the quality of both products and services, standardization has not been the case when it comes to the disciplinary process in general and the way state medical and osteopathic boards investigate physicians in particular.

This variation among the states not only raises concerns over the way medicine is regulated and its associated costs, it also has the potential to negatively impact both physicians and their patients.

The regulatory community has been very good at studying various aspects of licensure and regulation — ranging from educational models and testing to data processing. But one thing we have not been very good at is determining what works best — and what does not work so well — in physician investigations.

Why is this?

One obvious reason is the budgetary environment we find ourselves in. At a time of great fiscal upheaval in state governments across the country, state medical and osteopathic boards are hard pressed to find additional resources for projects beyond their everyday operational budgets. In fact, some states have been so strapped financially that they have had to either furlough existing personnel or not fill currently vacated positions. States unable to fund the necessary short-term needs have little time or resources to dedicate to research, even if such findings would benefit them in the long term.

Other significant reasons for the paucity of research in this area stem from the lack of external funding opportunities and trained personnel to conduct the research. Despite the myriad of federal and private foundations which exists, extramural funding in medical regulation is extremely limited (especially if the grant proposal seeks to take a new, untested approach). Since the majority of board personnel are trained in the business of medical regulation, and there is little time and resources for them to carry out their existing responsibilities, researchers from outside the agencies themselves would therefore be necessary.

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Whatever the cause or causes, our boards lack true evidence of best practices in physician investigations — primarily because empirical research in this area simply does not exist.

It is time to address this situation. For too long, we have relegated the topic of physician investigations

to the status of either "what we think works best" or "we have always done it this way" — rather than "what the evidence from research has shown."

We clearly need model procedures and policies for physician investigations, which could reduce costs and ultimately improve the quality of medical regulation, which in turn would improve the quality of medicine and public health. But in order to create good public policy, public policy must first be informed by good research.

Focusing on the Structure and Process of State Medical Board Investigations

State medical boards play a key role in safeguarding medical quality and patient safety by licensing physicians and conducting post-licensing oversight of those admitted to practice.[1–3] Currently, there are 70 state medical boards in the United States and its territories that regulate either allopathic or osteopathic physicians, or both.[4] Most of a board's activities are consumed by post-licensing discipline, with the investigational stage accounting for at least half of their expenditures.[1] Consequently, post-licensing discipline in general — and the investigational stage in particular — constitute a significant expense and should be the focus of a new research effort aimed at determining best practices.

Although all boards share a common purpose, none of them share the same structure or procedures regarding the way complaints are taken or physicians are investigated.[5, 6] In fact, the way a state medical board is set up (its organization, guidelines, and personnel), and the way it processes complaints and conducts investigations, matters significantly. For instance, in some states, investigative personnel are borrowed from other state agencies while other states rely on part-time personnel; some states rely on the investigators' report without requiring their attendance at the subsequent hearing (which raises due process concerns)[7]; and some states have investigators who have only limited training (or none at all), in medical regulation and standard of care. In fact, it was not until recently that Administrators in Medicine (AIM) (the organization for all state medical board executive directors), along with the Federation of State Medical Boards (FSMB) developed a certified medical board investigator training program in an effort to provide the training and education needed for such a specialized assignment. These are but a few of the many variations which exist among the state boards.

Aside from structure, process is equally important. For instance, when opioids and inappropriate prescribing is suspected, some boards may simply refer the matter to a panel of physician volunteers in lieu of subjecting the physician to formal review and its associated personal and financial costs. Alternatively, other states may opt to write a letter to the prescriber and request more information.

States also vary in the amount of information which can be released during or after the investigation (information which could be of benefit to the many legitimate prescribers). While such matters relating to the release of information is often governed by state law, determining what those laws are and how they could be changed remains an important part of developing a model policy.

While standardization of practices in both the medical field and other industries have increased the quality of both products and services, standardization has not been the case when it comes to the disciplinary process and the way state medical and osteophathic boards investigate physicians.[5] This variation among the states not only raises concerns over the way medicine is regulated, but also for its potential to negatively impact both physicians and their patients.

In fact, according to David G. Watt, M.D., (a former senior vice president with the FSMB), the wide variation among the states in terms of both structure and process makes "it difficult to predict the outcomes of actions with any degree" of accuracy. Dr. Watt has written that "Interstate variation exists in so many areas of medical regulation that much of it appears to be arbitrary. The variation implies that the same physician can approach different boards and see their medical license, and their practice, regulated differently, state to state. Is it possible that some of the decisions being made are not ideal?"[5]

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Dr. Watt goes on to argue that "greater standardization of structures and processes" would not only enhance quality and board performance, it could "contribute to public safety."[5] He is not alone. Many state medical boards have already expressed an interest in standardization and examining the variation across states, particularly as it relates to the complaint

and investigation process.[8] In fact, a recent needs assessment survey by the Federation of State Medical Boards Foundation found that "Developing best practice guidelines for State Medical Board investigations" was a research topic of considerable interest to the state medical boards.[9]

Getting Started

What is the best way forward? While any number of approaches to research could be taken, I would submit that even a simple pilot study involving 10 state medical boards (a case study approach where individual state medical boards are the units of analysis) would provide enormously useful information for the nation's regulators.

A pilot study could include a review of academic literature, relevant law, regulations and guidelines relevant to each state in the study. It would include field research and detailed analysis of the investigative processes and procedures and while it would involve the state medical and osteophathic boards in the research, it would not be overly burdensome to them. Results from an initial pilot study could then introduce an entirely new line of research aimed at reducing costs and improving the quality of medical regulation.

Dissemination of the results could be accomplished through presentations at professional conferences, meetings with state medical boards and societies, and publication in peer-reviewed publications such as the *Journal of Medical Regulation*. These forums permit opportunities to further refine best practices and policies, which in turn leads to positive outcomes in terms of research, medical regulation and patient care.

Data gathered and analyzed from a pilot study and additional research could lead to the following outcomes: 1) documentation of the variation and consistency which exists among the states, 2) identification of the problems faced by regulators (e.g., restrictive laws or policies that prevent disclosure of information that would benefit health care providers), 3) recommendations concerning best practices and reforms, 4) development of a model policy or policies on investigations, board structures, and procedures, and 5) greater consistency, transparency, and fairness to physicians, patients, and the public at large.

The Time to Act is Now

State medical and osteopathic boards are vested with the primary responsibility of protecting the public and improving the quality of patient care through regulation and oversight. But the wide variation in approaches to physician investigation among the states has undoubtedly led to different outcomes and frustrations by regulators, physicians, and patients alike.

Model state policies based on solid research of best practices in physician investigations would not only enhance the regulation of medicine by providing more consistency and transparency to physicians and prescribers, but would also serve as a guide to law enforcement agency personnel at both the state and federal levels. While much work needs to be done before model policies can be developed, a logical first step is the advancement of a new agenda for research and analysis of our physician-investigation policies and practices.

Some degree of variation will always be a part of a state-oriented system of medical regulation; it makes sense for states to adopt methods that work best for their citizens. But some approaches — particularly physician investigations — could benefit significantly from a shared knowledge base designed to help regulators apply the principles, processes and procedures that have proven most effective over time. ■

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