

Ranking State Medical Boards. Are the Best Really the Worst?  
By Steven I. Kern, Esq.\*

Public Citizen, a consumer oriented Ralph Nader offspring , recently rated State Medical Boards throughout the nation. Alaska, with only 1885 physicians, was rated as having the “best” Board, based upon the Board having taken serious disciplinary actions against 14 physicians last year, and 7.89 actions per thousand physicians over the past three years. By contrast, Minnesota, with 17,977 physicians, was rated “worst” based upon only 26 serious disciplinary actions last year and 1.07 actions per thousand physicians over the past three years. A serious disciplinary action is defined as a revocation, surrender, suspension, probation or restriction of license.

Among the findings was that Ohio was the only one of the nation’s fifteen most populous states with the highest disciplinary rates, and that Florida, one of the largest states in the country, was among the ten states with the lowest rates of disciplinary action.

Public Citizen found that most boards are under-disciplining physicians, based in part upon a previous report it published in 2006 finding that sixty-seven percent of insurance fraud convictions and thirty-six percent of convictions related to controlled substances were associated with only “non-severe” discipline by the boards. It then concluded that “[m]ost states are not living up to their obligations to protect patients from doctors who are practicing medicine in a substandard manner.”

Based upon its conclusions Public Citizen demanded that action must be taken “legislatively and through pressure on the medical boards themselves, to increase the amount of discipline and, thus, the amount of patient protection.”

Public Citizen has it all wrong. Boards should not be judged by the number of licenses suspended or revoked, but by how well they protect the citizens of their state. Its simplistic analysis is akin to judging a city’s police department based upon the number of prisoners in its jails, rather than the number of crimes committed. Most citizens are far more eager to live in a place with a low crime rate, than with a high prison population.

Enlightened boards recognize that physicians are highly intelligent persons, each of whom has undertaken hundreds of thousands of dollars of education, years of training, and been the recipient of scarce, valuable teaching resources. To preserve and protect these extraordinary resources, wherever possible, these boards work hard to rehabilitate and re-educate, rather than punish. In lieu of suspensions and fines, they require community service, oversight and mentoring. By keeping physicians in productive, honest practice, boards can provide a far greater service to their citizens than provided by simply removing physicians from practice.

Unfortunately, simplistic ratings by Public Citizen and others continue to put pressure on boards to take more disciplinary actions and become more punitive to maintain or improve their ranking. Invariably, state and local news media trumpet Public Citizen’s findings to call for more actions against physicians. Board members are subject to political pressure to “toughen up” or risk losing their appointments.

These pressures must be rejected. Given the enormous investment society makes in training physicians, the impending physician shortage, and the need for more physicians in underserved areas, removing physicians from practice is most often shortsighted and counter-productive. In the vast majority of cases the community is better served by having more competent physicians available to care for patients, than by having more licenses revoked. Boards must be encouraged, in all but the most egregious cases, to resolve cases in a manner that will allow physicians to use their education and training to improve healthcare. Rarely is that accomplished by removing a physician from practice.