



**Department
of Health**

**Office of Professional
Medical Conduct**



Board for Professional Medical Conduct
&
Office of Professional Medical Conduct

February 18, 2021

Howard A. Zucker, M.D. J.D., Commissioner
New York State Department of Health

Thomas T. Lee, M.D., Acting Chair Michael Jakubowski, M.D. Interim Executive Secretary
Board for Professional Medical Conduct

Paula M. Breen, Director
Office of Professional Medical Conduct

Disclosure Statement

Speakers:

Ms. Paula M. Breen, MPA

Ms. Shelly Wang Bandago, MPA

- Have no relevant financial relationships to disclose
- Will not be discussing unlabeled/unapproved use of drugs or products

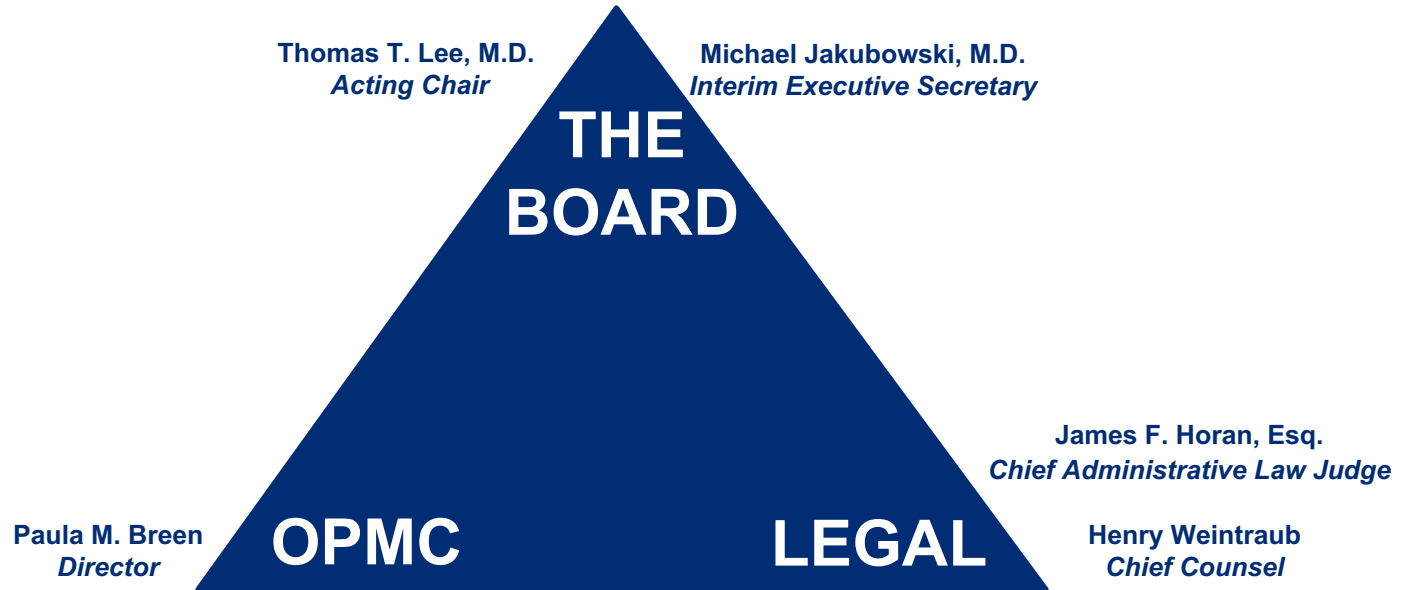
Today's Discussion Topics

- What is misconduct?
- What will you experience during the OPMC process?
- How can you avoid misconduct allegations?

BOARD & OFFICE OF PROFESSIONAL MEDICAL CONDUCT - MISSION

- ✓ Protect the public from professional medical misconduct
- ✓ Provide Physicians and Physician Assistants due process
- ✓ Assist the Department of Health and the Commissioner as needed

KEY COMPONENTS



THE PROFESSIONAL MEDICAL CONDUCT PROCESS

- **Governing Statutes**
 - ✓ **Education Law §6530 and §6531**
 - ✓ **Public Health Law §230**

SERIOUS MISCONDUCT

About 78% of all Board actions:

- ✓ Negligence / Incompetence
- ✓ Impairment
- ✓ Sexual Abuse
- ✓ Fraud
- ✓ Inappropriate Prescribing

SERIOUS MISCONDUCT

- **Negligence**: failure to exercise reasonable/prudent care
 - *Not based on Outcome or Intent*
- **Incompetence**: lack of skill or knowledge necessary
- For both Negligence and Incompetence:
 - ✓ *Standard of practice*
 - ✓ *More than one occasion*
- **Gross Negligence/Incompetence**: egregious or conspicuously bad
- **Inappropriate prescribing**

SERIOUS MISCONDUCT

- **Sexual Misconduct**
- **Impairment**
 - ✓ Practicing the profession while impaired
 - ✓ Being a habitual abuser of alcohol, or user of narcotics, barbiturates, amphetamines, hallucinogens or drugs having similar affects
 - ✓ Having a mental, physical, or other condition that impairs a licensee's ability to practice

SERIOUS MISCONDUCT

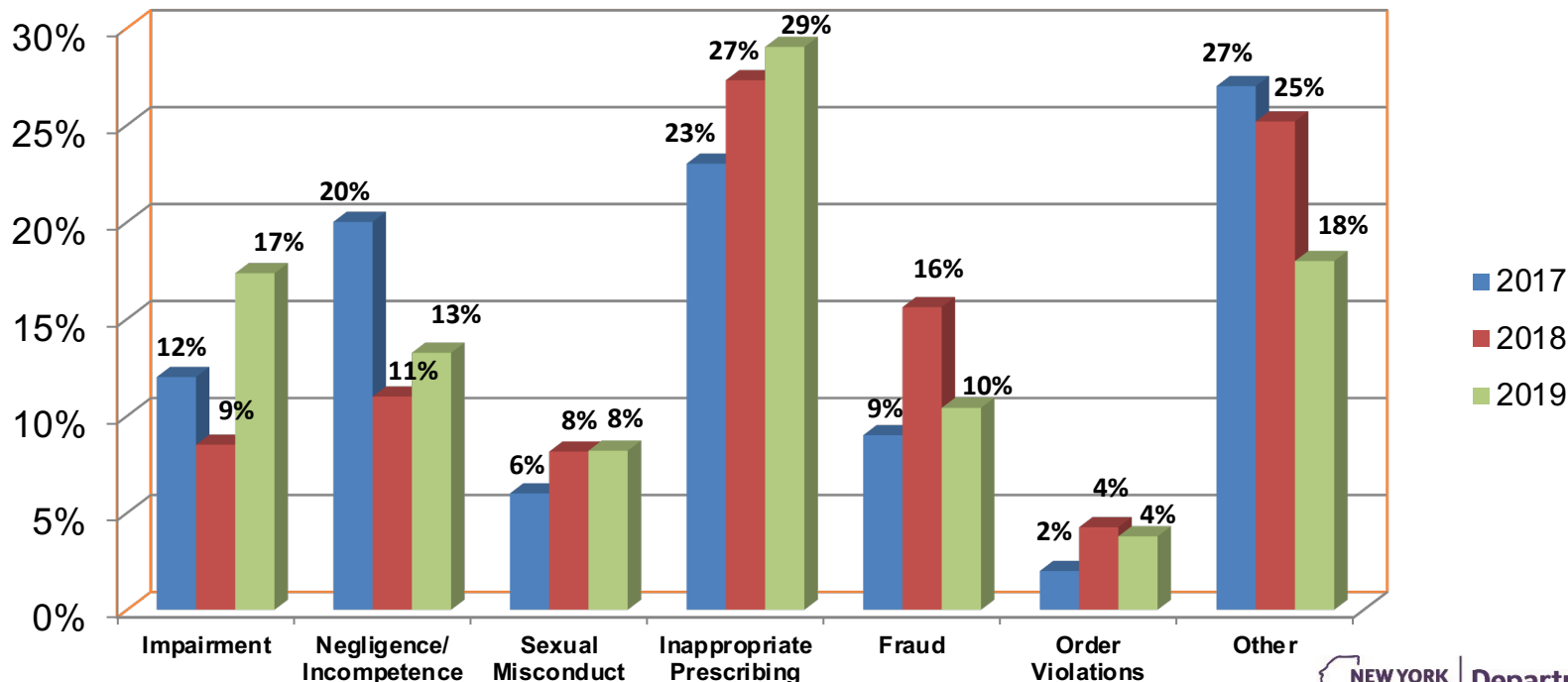
- **Fraud** (*false representation with intent to mislead*):
 - ✓ **Excess, unjustified tests**
 - ✓ **Billing** (*visits/tests not performed; upcoding*)
 - ✓ **False representations on:**
 - Applications for licensure or registration
 - Credentialing/ application(s)
 - Employment application(s)
 - ✓ **Filing false report**

OTHER MISCONDUCT

- ✓ Criminal conviction
- ✓ Other state board disciplinary action
- ✓ Violating patient confidentiality
- ✓ Failure to maintain adequate records
- ✓ Failure to use barrier precautions for infection control
- ✓ Delegating care to unqualified persons
- ✓ Lack of informed consent
- ✓ Failure to provide records
- ✓ Conduct in the practice of medicine which evidences moral unfitness to practice medicine
- ✓ Failing to comply with law
- ✓ Abandoning a patient in need of immediate care



BOARD FINAL ACTIONS BY MISCONDUCT TYPE



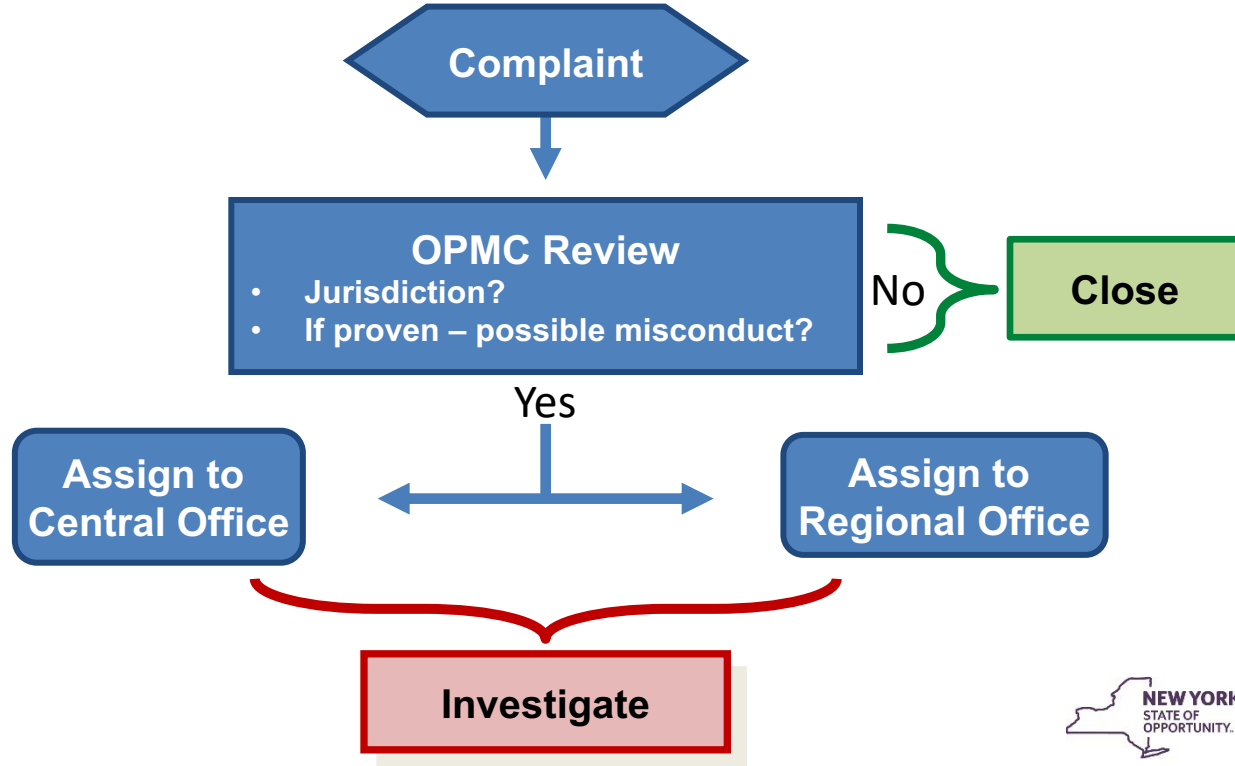
The Professional Medical Conduct Process



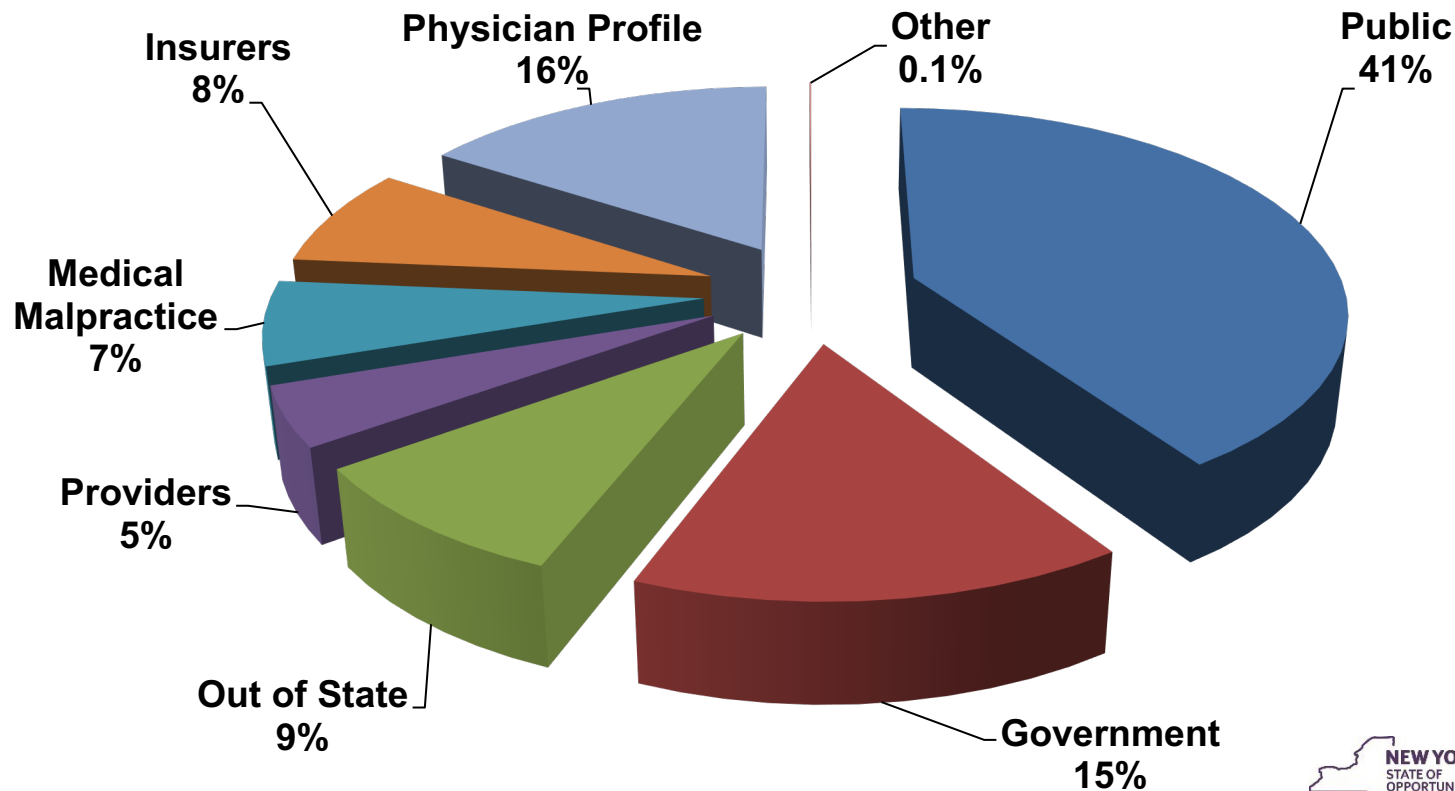
THE PROFESSIONAL MEDICAL CONDUCT PROCESS



COMPLAINTS



2019 SOURCE OF COMPLAINTS (9,073)



INVESTIGATIVE ACTIVITIES

- Medical Record review
 - Interviews
(Complainant / Subject / Witnesses)
 - QA records
 - DOH and other data
 - Expert Opinions
- Closed**
OR
Investigation Committee

INVESTIGATION COMMITTEE RECOMMENDATIONS

- ✓ Closure
- ✓ Further investigation - *Comprehensive Medical Review*
- ✓ Administrative Warning
- ✓ Summary Suspension
- ✓ Hearing - *Consent parameters in lieu of Hearing*

HEARING COMMITTEE

- Consists of 3 Board members
 - ✓ 2 physicians, 1 public member
- Determines innocence/guilt
- Determines penalty imposed / actions to be taken (*e.g. monitoring*)
- Standard of Proof: the preponderance of evidence

BOARD DECISIONS

- Censure & reprimand
- Suspension (actual/stayed)
- Probation (monitoring)
- Limitation of license
- Revocation



- Clinical competency exam
- Monetary fine
- Education/Training
- Community service
- Dismissal

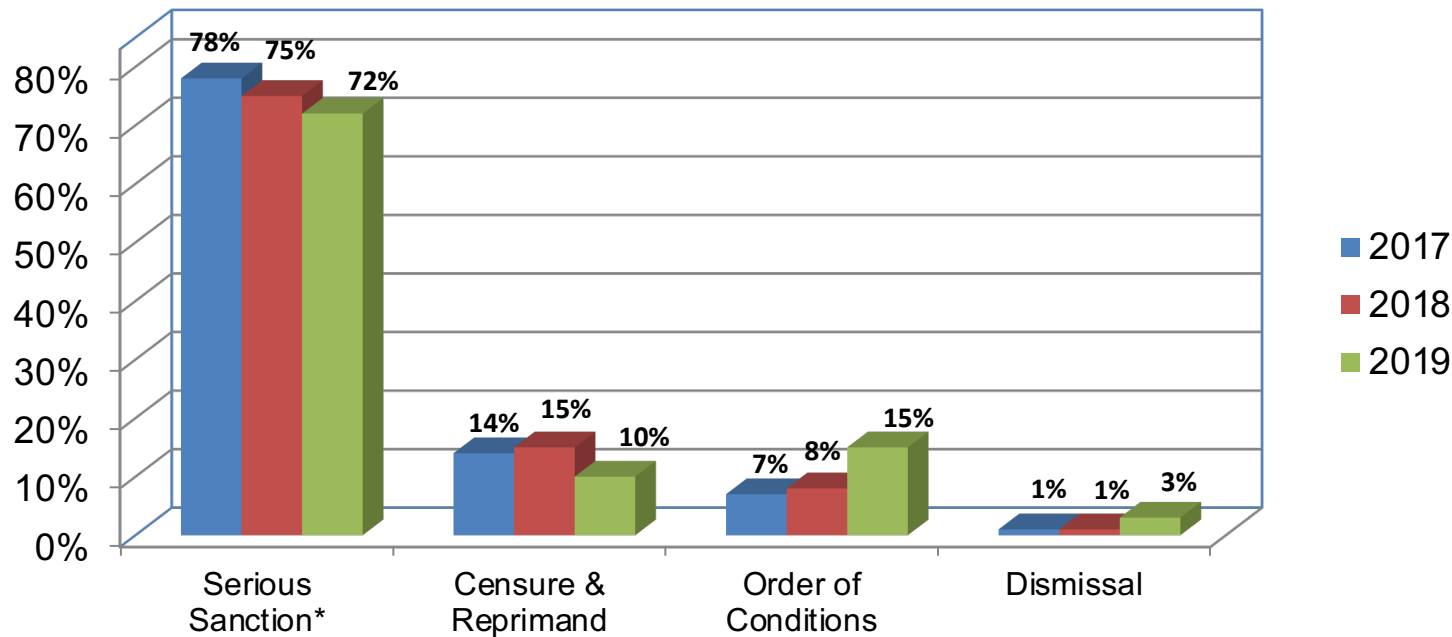
APPEALS

- ✓ **Administrative Review Board**
(5 Board members, including 3 physicians)
- ✓ **Judicial Review - Article 78 (Appellate Court)**

ADMINISTRATIVE REVIEW BOARD DECISIONS

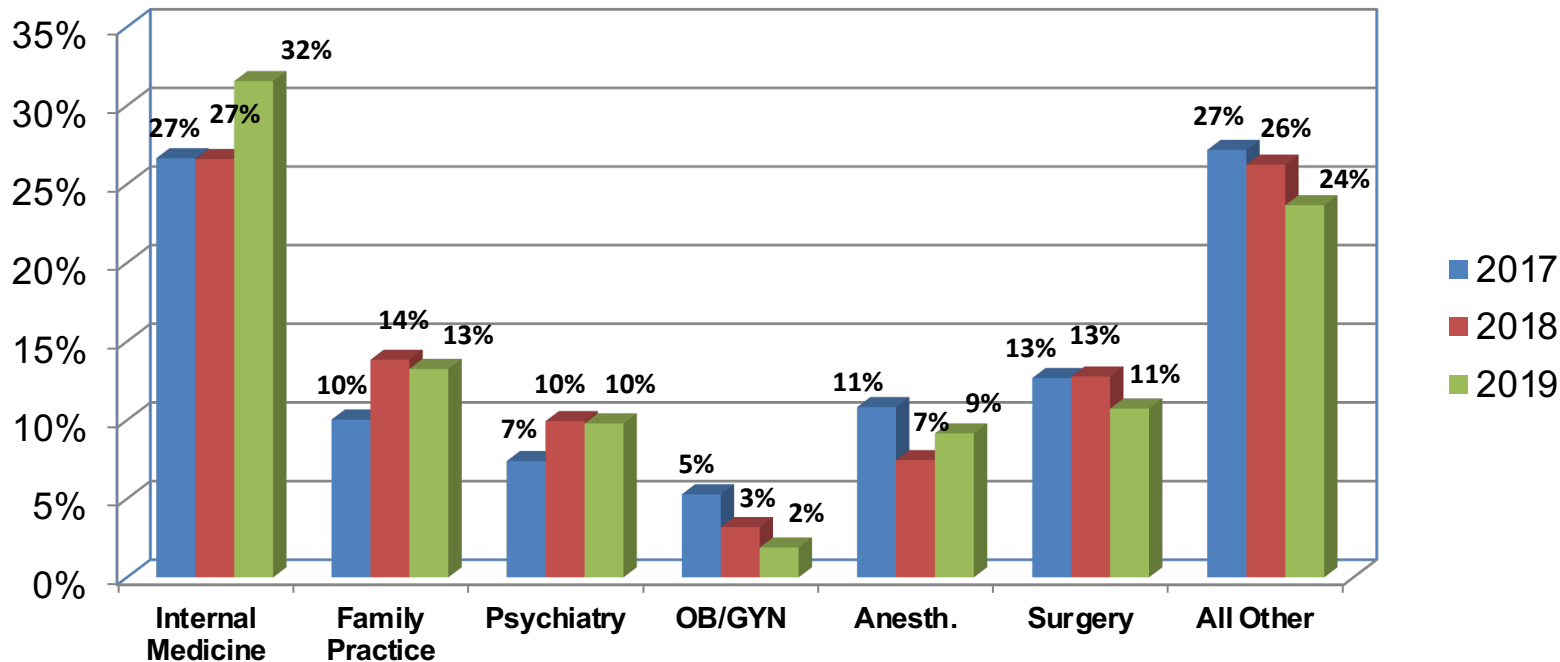
	2017	2018	2019
ARB Decisions	17	6	11
Determination Upheld	16	6	11
Determination Not Upheld	1	0	0
Penalty Increased	9	3	4
Penalty Decreased	3	0	0
Same Penalty	5	3	7
Respondent Initiated Appeal	4	3	5
Department Initiated Appeal	9	2	6
Both Parties Initiated Appeal	4	1	0

FINAL ACTIONS BY PENALTY

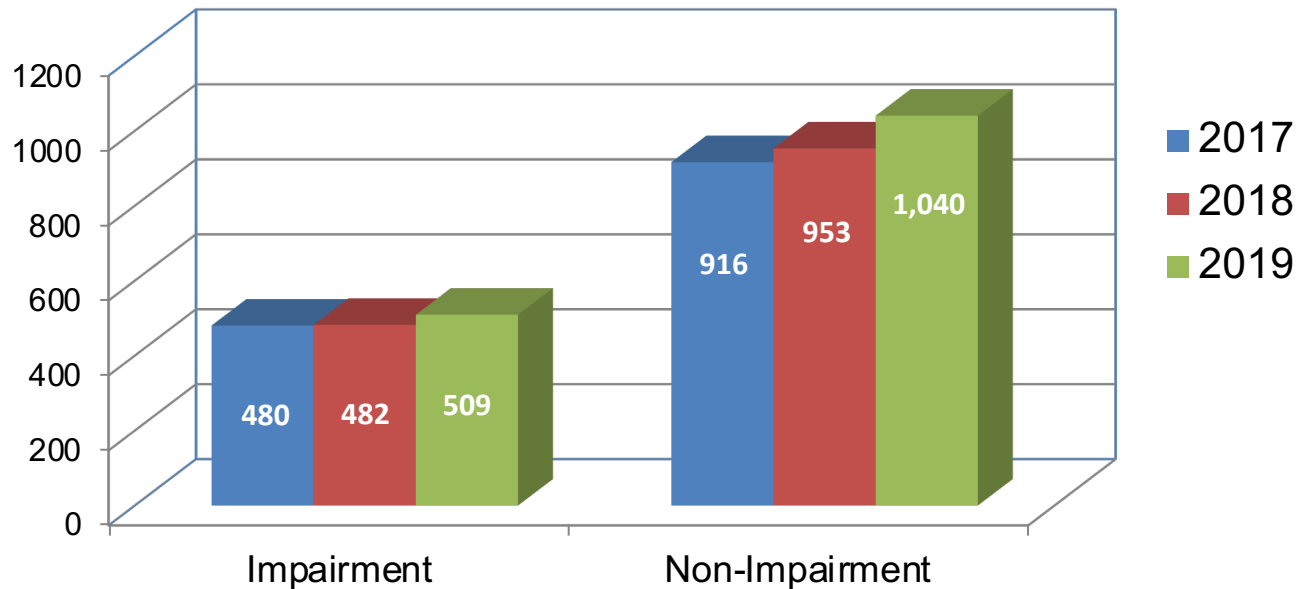


- Serious sanction includes revocation, disciplinary and non-disciplinary surrenders, suspensions, and restrictions/limitations.

FINAL ACTIONS BY SPECIALTY



LICENSEES MONITORED BY PHYSICIAN MONITORING PROGRAM



OPMC ACTIVITY 2019

Investigations Opened	3,300
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Investigations Closed	3,296
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Licensees Referred for Charges	In State: 65
	Referral: 181

Final Board Actions	317
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WHAT CAUSES A MISCONDUCT ALLEGATION?

- ✓ Poor communication with patient / representative
- ✓ Outcomes that are not consistent with expectations
- ✓ Rude / inappropriate behavior
- ✓ Perception of poor clinical care
- ✓ Billing issues
- ✓ Office conditions

WHAT CAUSES A MISCONDUCT FINDING?

✓ **Poor clinical care: Not consistent with SOC; Poor quality...**

- Patient evaluation
- Diagnoses
- Selection of treatment
- Monitoring & follow-up
- Adjusting treatment as necessary
- Coordination / communication with other providers

✓ **Poor documentation / patient records**

WHAT DOES AN OPMC INVESTIGATION MEAN TO ME?

✓ Time:

- Average time for investigative closure: 11 months
- Average prosecutorial time: 5 months

✓ Cost:

- Counsel
- Time away from work
- Fine
- CME, malpractice, probation

✓ Stress:

- Impact on reputation with colleagues, community, family
- Board actions are PUBLIC

CONTACT INFORMATION

- **Office of Professional Medical Conduct**

- ⚡ www.health.ny.gov/professionals/doctors/conduct/
- ⚡ 800-663-6114
- ⚡ e-mail: OPMC@health.ny.gov

- **Physician Profile**

- ⚡ www.nydoctorprofile.com
- ⚡ 888-338-6998

- **Bureau of Narcotic Enforcement**

- ⚡ www.nyhealth.gov/professionals/narcotic
- ⚡ 866-811-7957

- **Health Commerce System Website**

- ⚡ <https://commerce.health.state.ny.us>





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