

LEGISLATIVE AUDIT COMMISSION



Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians
August 2006

622 Stratton Office Building
Springfield, Illinois 62706
217/782-7097

Program Audit

Department of Financial and Professional Regulation's Disciplining of Physicians August 2006

RECOMMENDATIONS - 24

Background and Report Conclusions

The Department of Financial and Professional Regulation (Department) is responsible for reviewing complaints and issuing disciplines against physicians licensed under the Medical Practice Act. In Fiscal Years 2004 and 2005 combined, the Department opened 3,687 physician investigations and issued a total of 458 disciplines against physicians.

In May of 1997 the Office of the Auditor General issued a program audit of physicians regulated under the Medical Practice Act which concluded that the Department lacked adequate management controls in its investigatory, disciplinary, and probationary processes. This 2006 audit, conducted pursuant to House Resolution No. 16, similarly concludes that improvements are needed in the Department's processes to review complaints and discipline physicians.

INVESTIGATIONS

Contrary to the Administrative Rules, Complaint Intake staff closed 54 medical claims in FY05 without forwarding them to Medical Investigations. Some 15% of cases were being closed administratively in the Investigations Unit without approval from the Medical Disciplinary Board.

Investigators did not have access to prior mandatory reports (such as malpractice settlements submitted by insurance companies or reports filed by hospitals) that were not sent for further investigation by the Medical Disciplinary Board. Also, prior complaints were not documented in investigation files in 16 percent (15 of 94) of the investigative files we reviewed.

Half of the investigations of cases received in FY04 and FY05 took longer than the five month guideline for completing investigations. As of May 2006, the total number of cases at the Medical Coordinator's office was 210.

PROSECUTIONS

In FY04 and FY05 the Department issued a total of 458 disciplines against physicians, including refusing to renew licenses, suspending or revoking licenses, reprimanding licensees or placing them on probation. At least 41 percent (189 of 458) of the disciplines were cases where the Department's discipline was based on actions taken by other states' disciplinary agencies.

**Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians**

The Department has not implemented procedures to involve people making complaints in the disciplinary process, and cases took an average 258 days after referral to Prosecutions to reach final resolution.

PROBATION

The Department has not dedicated sufficient resources to carry out its Probation Compliance responsibilities. The Division of Professional Regulation has **only two** Probation Compliance investigators for the entire State for over 100 professions regulated by the Division. As of April 2006, these two employees of the Probation Compliance Unit were monitoring a total caseload of approximately 1,100 cases, of which approximately 150 were physician discipline cases.

The Department is not adequately monitoring disciplined physicians. Monitoring deficiencies were noted in **all** of the 25 medical probation cases selected for testing. In nine cases, most of which involved physicians who had their licenses suspended or revoked, the Department could not provide a file or any other evidence of Probation Compliance monitoring. In 12 other cases, the files provided lacked evidence to show that some or all of the required monitoring had occurred.

PUBLIC INFORMATION

The Department maintains a website to provide public access to license status and discipline information on physicians. However, the Department's monthly reports, used to report on the disciplinary actions taken by the Department, were not accurate. In addition, there is some conflict about what reportable disciplinary actions include. The Department has no written policies and procedures guiding the public reporting process.

The Department has not yet implemented several significant requirements of an important new law relating to physician regulation and discipline. Also, the Department has a number of problems related to properly documenting the decisions made related to physician disciplines both paper files and in the agency's computer systems.

Regulation Under the Medical Practice Act

The Medical Practice Act of 1987 (Act) creates the Medical Disciplinary Board (Board), composed of eleven members, which is responsible for disciplining physicians licensed under the Act. Since March 2005 the Board has had no public members. The Act also requires the Director to select a Chief Medical Coordinator and two Deputy Medical Coordinators, all licensed physicians, to be the chief enforcement officers of the Act. At least one Medical Coordinator is to be located in Chicago and at least one in Springfield. They review the completed investigations and make recommendations about disciplinary actions to the Board and the Complaint Committee.

Within the Disciplinary Board, the Act creates the Complaint Committee. Composed of one of the Medical Coordinators, the Chief of Medical Investigations, and at least 3 voting members of the Disciplinary Board, the Committee is to meet twice a month to

**Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians**

recommend decisions regarding complaints or refer complaints to the Prosecutions Unit. The Department may take the following disciplinary actions on a license:

- revoke;
- suspend;
- place on probationary status;
- refuse to renew;
- reprimand;
- fine; or
- any other disciplinary action deemed proper.

The Act lists 43 grounds that could result in disciplinary action against licensed physicians including: gross negligence; dishonorable, unethical or unprofessional conduct; substance abuse; fraud; immoral conduct; filing false records or omission to file; and willful overcharging for professional services. With few exceptions, proceedings for disciplinary action must be commenced within five years after receipt of a complaint by the Department.

Program Audit Recommendations

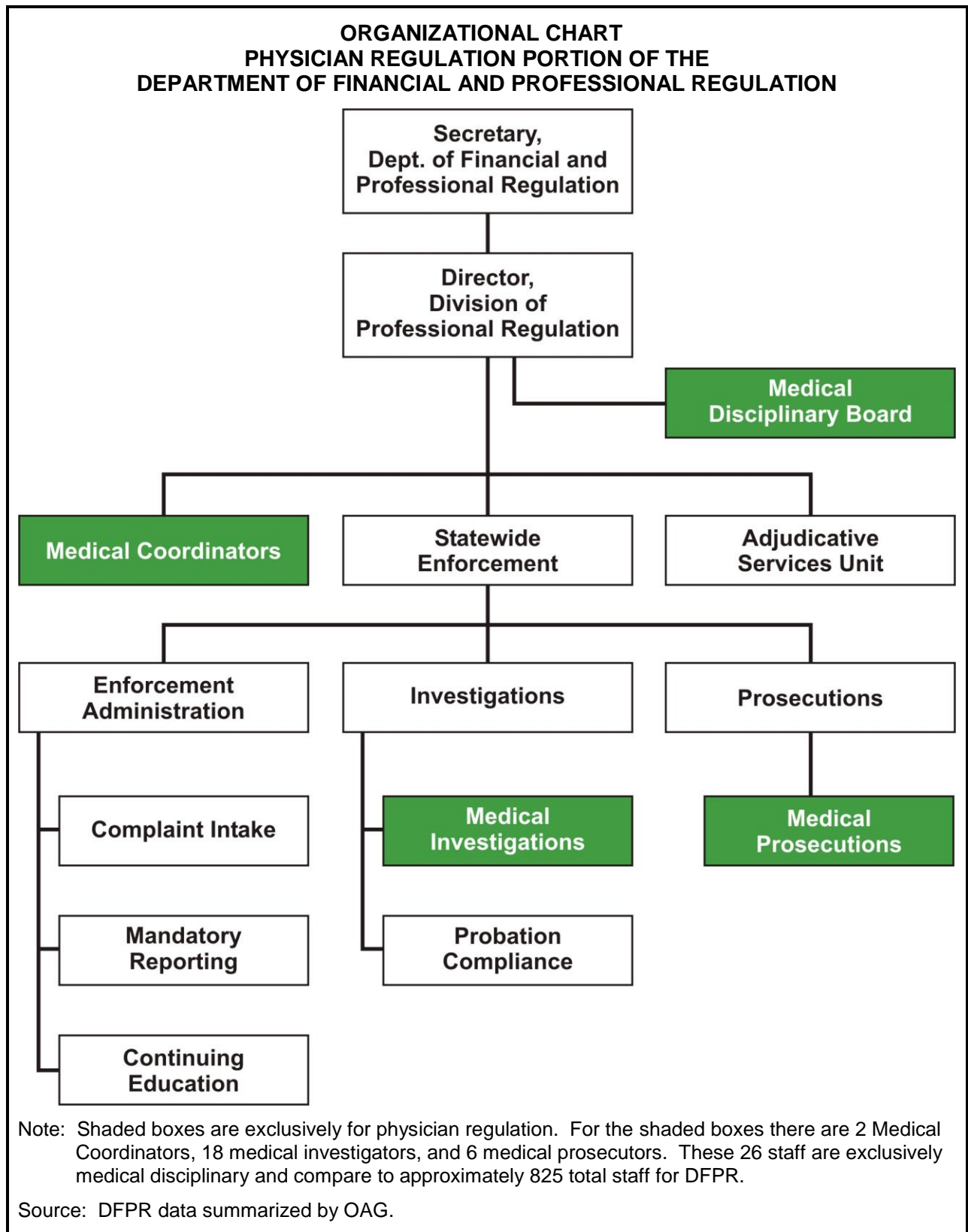
- 1. Log all initial claims, forward them to Medical Investigations and close them according to requirements in the Administrative Rules.**

Findings: The physician disciplinary process at DFPR is handled through a four step process. The units that handle those four steps are Complaint Intake, Investigations, Prosecutions and Probation Compliance. Both Complaint Intake and Probation Compliance units handle cases from all professions while Investigations and Prosecutions are both included in Statewide Enforcement and have a specific medical component. The table on the following page is an organization chart that shows the physician regulation portion of the Department.

Complaint Intake receives complaints for **all** professions regulated by the Department. The Unit consists of a supervisor, 2 full-time, and 1 temporary staff. Complaints are received by telephone, facsimile, mail, in person, and through the Department's web site.

The Department's Administrative Rules require that all initial claims against physicians be documented and forwarded to the Chief of Medical Investigations for review. An initial claim is an allegation made against a physician or physician assistant that results in a preliminary analysis to determine whether the Division should conduct a further investigation. A complaint is defined as the initial claim made against a physician or physician assistant that results in an inquiry or investigation.

**Program Audit
 Department of Financial and Professional Regulation's
 Disciplining of Physicians**



Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians

Contrary to the requirements in the Administrative Rules, Complaint Intake staff close some initial claims without forwarding them to the Medical Investigations Unit for review. When the initial claims are received, Intake staff do not log or document each claim and forward them to Medical Investigations as required. Instead, they review the information in the claim to determine if there is sufficient information to determine: (1) the nature of the alleged violation; (2) if the Department has jurisdiction; and (3) if the alleged action, if proven, would constitute a violation of the Professional Practice Act. If a claim meets all of these criteria and is deemed as a valid complaint, staff document and enter the complaint into RAES (Regulatory Administration and Enforcement System) with a complaint number. Physician complaints are then forwarded on to Medical Investigations.

If Complaint Intake staff determine that an initial claim is not a valid complaint, they contact complainants by phone to explain why they cannot proceed with the claim and/or try to get more information. Complaint Intake staff said that they keep some documentation for some of these closed initial claims, but there are no criteria for when these claims are kept and when they are not. For FY05, the auditors found 54 initial claims closed in Complaint Intake identified as medical. All initial claims are to be referred to the Complaint Committee and Disciplinary Board for closure. However, the initial claims against physicians which are closed in Intake are never referred to Medical Investigations or the Board for closure.

Response: The majority of initial claims are forwarded to Medical Investigations and processed according to the requirements in Administrative Rules. In response to this recommendation, the Department will change its procedure relating to initial claims that do not warrant further investigation upon receipt by the Complaint Intake Unit. They too will be processed and forwarded to the Complaint Committee and Medical Disciplinary Board, for review and final approval of closure.

The Department, on average, receives 1,600 initial claims annually and has developed and implemented a comprehensive and efficient Complaint Intake Unit which efficiently analyzes and processes each claim. Complaint Intake personnel are highly qualified to make preliminary analyses of claims and routinely treat each as potentially serious. After preliminary analysis of an initial claim is conducted, Complaint Intake personnel render a determination that further investigation is or is not possible and/or required.

There are limited but clearly and statutorily defined instances where it is not possible or required that a complaint case be opened on an initial claim. The majority of initial claims received by the Department, however, are opened as an official complaint case for further investigation. Because Complaint Intake personnel are only authorized to open complaint cases, at no time are complaint cases closed by Complaint Intake personnel.

Auditor Comment: For FY05, auditors found 54 initial claims that had been closed in Complaint Intake that we identified as medical. Although Complaint Intake does not close "complaint" cases, they have closed "claims." Also, as noted in the report, Complaint Intake does not log all initial claims received which would help ensure that claims are processed efficiently.

Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians

Dec Response: Complaint intake currently logs all initial claims received. Each claim is then reviewed by the chief of medical investigations. For questionable claims the deputy medical coordinator and an investigator will review the claim to determine whether or not it will be assigned to an investigator or forwarded to the complaint review committee for closure.

Aug Response: CIU is fully compliant with the Medical Practice Act. All cases are logged into the ILES Complaint system and are assigned an Enforcement number. Cases that are questionable are reviewed by the Medical Coordinator and the Chief of the Medical Investigation Unit. If it is determined that there was not a violation of the Medical Practice Act, then the case is referred to the Complaint Committee of the Medical Disciplinary Board where it is reviewed and either closed or referred to the Investigation Unit.

- 2. Comply with the Administrative Code provisions requiring that closure of all initial claims and complaints be approved by the Board. This approval should be documented.**

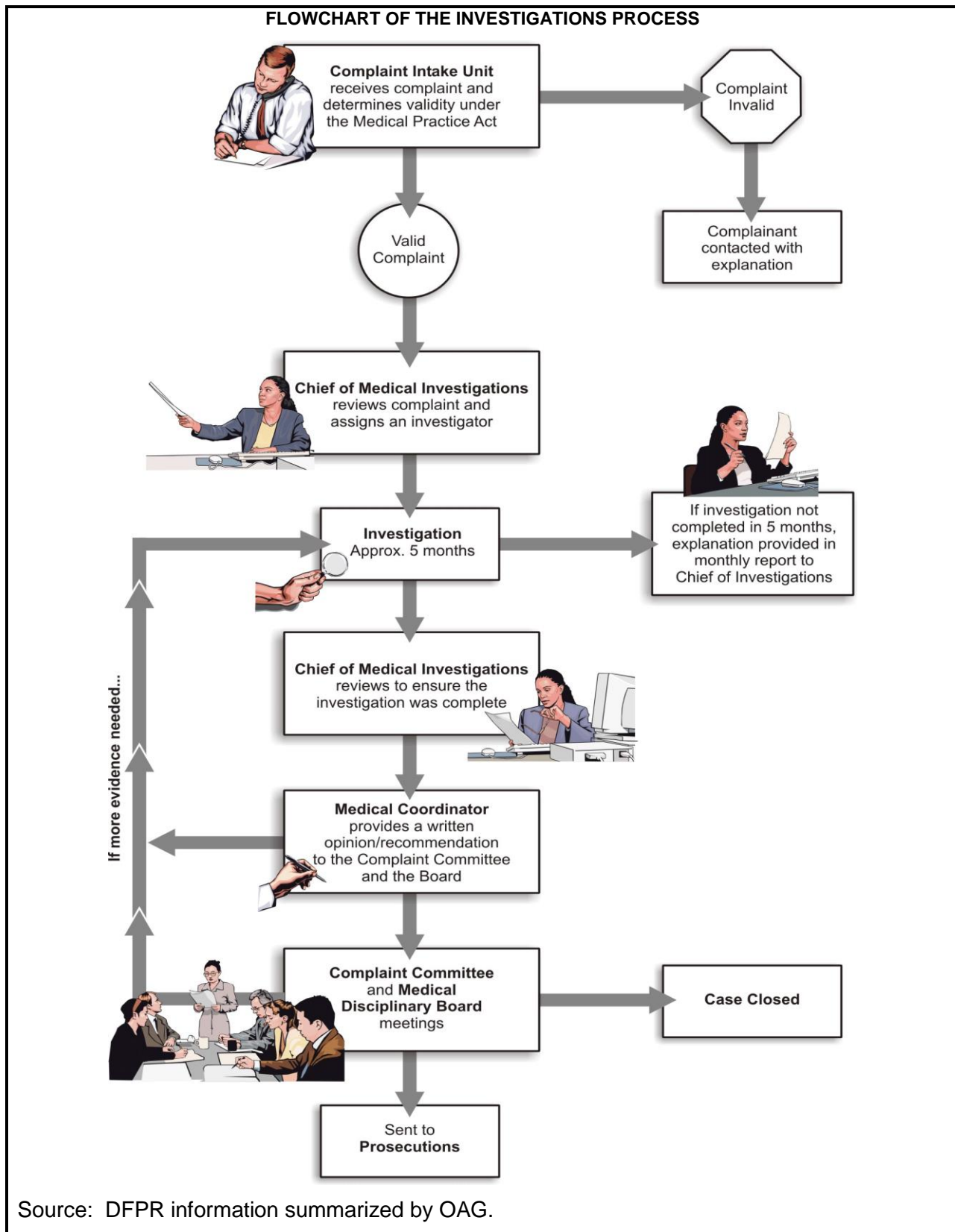
Findings: Cases were being closed administratively in the Investigations Unit without approval from the Medical Disciplinary Board, as required by Administrative Rules. Review of data provided for all cases with activity in FY04 and FY05 showed that 15% (665 of 4,357) of cases were closed administratively. The Department could not provide documentation that all administrative closings had been approved by the Board.

If the initial claim does not become a complaint, then the Chief is required to recommend closure to the Complaint Committee of the Medical Disciplinary Board. The Complaint Committee is established by the Medical Practice Act to review complaints and make recommendations for disciplinary actions to the Board.

A DFPR official stated that the Board is given a list of administrative closings that it approves at every meeting. However, the auditors reviewed copies of Board and Complaint Committee minutes for Calendar Year 2004 and half of Calendar Year 2005 and found that the list of administrative cases to be closed was neither mentioned nor included in any of the minutes from those years. The auditors requested these lists of administratively closed cases for Calendar Year 2004 and Calendar Year 2005 on two occasions but the Department did not provide the documentation until the exit conference.

Response: The Department complies with the Administrative Code provision requiring that closure of all complaints be approved by the Medical Disciplinary Board. However, the complaints are reviewed in the closed session of the Medical Disciplinary Board meeting and the discussion of these complaints is, therefore, not included in the Medical Disciplinary Board's general minutes for the audit years FY04 and FY05. The case closures from closed sessions of FY04 and FY05 are documented separately.

**Program Audit
 Department of Financial and Professional Regulation's
 Disciplining of Physicians**



Source: DFPR information summarized by OAG.

**Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians**

This documentation provides the dates that the Chairman of the Board reviewed and approved each case for closure along with his or her initials.

As stated in the Department's Response to Recommendation 1, initial claims that do not warrant further investigation will also be approved for final closure by the Complaint Committee and Medical Disciplinary Board.

Auditor Comment: Over the course of audit fieldwork, auditors requested documentation of Board approval for closure on two occasions: first, on February 16, 2006; and later on March 7, 2006. It was not until the exit conference, on June 29, 2006, that the Department made documentation available for this finding. When auditors reviewed the information related to sample cases, auditors still found 2 of 15 cases where closing was not documented in the Board documentation provided.

Dec & Aug Responses: The Department will continue to document administrative closure of all cases as required.

- 3. Develop management controls to ensure timely completion of investigations of complaints received by the Department. These controls should be in the form of written policies which include specific timeliness requirements. Any reports required should be reviewed by management personnel to ensure accuracy.**

Findings: The Department does not have a specific timeliness standard and the auditors' analysis showed that half of medical investigations are not completed within the general guidance of five months. The Department's Enforcement Manual says that most investigations are completed within five months; however, 50 percent (548 of 1,090) of cases investigated and sent to the Medical Coordinator during FY04 and FY05 took longer than five months to complete the investigation. In addition, investigators do not always document and explain cases that are over five months old on monthly reports as required by the Department's Enforcement Manual.

Generally, there was no evidence that the reports submitted were ever reviewed or used by management as a tracking tool. There were no signatures, initials, or other indications of review by management personnel. While the monthly report has the potential to be an effective tool in tracking the timeliness of investigations, without proper management review to ensure proper submission, accuracy, and follow up to assure issues are addressed, the tool loses its effectiveness.

Response: The Department is in the process of reviewing what timeliness requirements should be implemented to improve the quality of its enforcement of the Medical Practice Act as amended. The Department's Medical Investigations Unit reviews, investigates and processes 1,600 complaint cases per year. Because the nature of cases and the amount of investigation necessary to develop those cases vary significantly, the Department wants to make sure that timeliness requirements actually improve the quality of the cases it brings against physicians.

**Program Audit
 Department of Financial and Professional Regulation's
 Disciplining of Physicians**

Time to complete Investigations CASES RECEIVED IN FY04-FY05		
<u>Number of days</u>	<u>Cases</u>	<u>Completed</u>
153 or less	542	50% in five months or less
154-180	189	
181-210	175	
211-240	90	
241-270	42	50% (548) took longer than 5 months
271-300	15	
301-330	18	
331-365	7	
366-1096	<u>12</u>	
TOTAL	<u>1,090</u>	
Source: OAG analysis of DFPR data.		

The investigation of a medical case is oftentimes extremely complex. While written policies regarding timeliness requirements are and shall continue to be as specific as possible, the Department must give careful consideration to each individual case as well as to due process requirements.

Since the review may not determine that timeliness policy changes will improve the quality of medical investigations, the Department has implemented new tracking systems to signal potential timeliness issues. For example, the Department is developing an automated alert system within its upgraded computer system which will generate tracking reports to assist management personnel in addressing timeliness requirements.

The Department notes that, at no time during or since the audit period, has it been unable to prosecute a case due to timeliness issues. Cases pursued against

physicians with serious complaints are typically open for 5 months or longer, as would befit complex medical investigations. The Medical Investigations Unit has been an effective force in conducting sound investigations of potentially serious violations of the regulations set forth in the Medical Practice Act and its Administrative Rules.

Auditor Comment: While the auditors agree that the Department must give careful consideration to each individual case, we do not agree that taking excessive time to complete a medical investigation is conducive to due process. As noted in the audit, 50 percent of the investigations took longer than the 5 months suggested by the Department's own policies, with one case taking 1,096 days.

Dec Response: The Department is mandated by statute to provide due process to all respondents which must be carefully balanced against the department's investigations unit's policies & procedures regarding case timeliness.

Management has implemented tracking reports to monitor cases which are nearing or have exceeded the department's processing time guidelines.

Aug Response: The Enforcement Manual has been revamped. Timelines and procedures for investigations have been revamped to comply with suggestions of the audit. The manual will include the requirement that monthly case reviews are conducted

**Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians**

on both investigators and prosecutors. This requirement should ensure that cases are conducted in a timely matter, and that computer entries memorializing activities are made in a timely manner. Further, the manual has been edited to be consistent with the master Department wide manual.

4. Include requirements in procedures that prior complaint information be incorporated in files and should assure that information is included.

Findings: Investigation files reviewed by the auditors did not always contain sufficient documentation of activities performed and recorded in the RAES (Regulatory Administration and Enforcement System) case tracking system. Overall, the auditors found that 70 percent of files reviewed (66 of 94) did not contain sufficient documentation. Items that were missing included prior complaints, opinions rendered by the Medical Coordinator as to whether the conduct violated the Medical Practice Act, and documentation of the date the complaint was received by the Department.

In the review of 94 investigative files, the auditors found 15 cases (16 percent) where the prior complaints and disciplines were not documented in the file. In addition, investigators did not have access to information regarding prior mandatory reports that were not sent for further investigation by the Medical Disciplinary Board. Mandatory reports indicate that some action has been taken against a physician or that a lawsuit against the physician has been adjudicated. Further discussion is included later in this chapter.

Response: Medical investigators and prosecutors have access to all prior complaint and case information. In most cases, once the information has been reviewed, copies of relevant cases are incorporated into the working case file maintained by each investigator. However, during Fiscal Years 04 and 05, investigators were unable to use much of that information in the development of current cases due to statute of limitations constraints that have since been lifted.

Working files do contain prior complaint information for each case such as the Respondent and Complainant history. Reports for the chronologies and historical information is always checked in the computer system, printed, and forwarded to the investigator for inclusion in the working file. This allows the investigator to determine if any previous complaint information is related to or helpful in investigating the current case. If a chronology is not present in a working file, it was either not required by guidelines or it was not applicable to conducting a thorough investigation. Working files are highly detailed and will contain the appropriate information that the medical investigator requires to conduct a complete investigation.

Unfortunately, when the Auditor General requested the investigative file, they were not given the working files and instead reviewed the historical file which did not contain the prior complaint information. This was the Department's error.

**Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians**

Auditor Comment: We requested the most complete files for each case and were told the files provided contained the most complete record of each case. The Department's response that "historical files" were provided instead of "working files" illustrates the weakness in the Department's ability to retrieve complete case information when requested, as discussed in Chapter Six and Recommendation 20. For two cases tested, auditors specifically requested prior complaint information from the Department after our review. For those cases, no additional documentation was provided by the *Department*.

Dec & Aug Responses: The Department is incorporating all prior complaint information in its investigatory and prosecutory files.

5. Develop controls to ensure that all investigative activities are properly conducted and documented in both the case file and the computer system.

Findings: As part of the review, the auditors compared the information in the case files to the information found on the case chronology. The case chronology is a summary of the information on the RAES system which includes complaint receipt date, date of the incident, dates assigned to various Department personnel and activities performed, and the final outcome of the case, if closed. Of the total 130 cases examined for both Investigations and Prosecutions, the auditors found they could not verify all the information on the chronology in 73 cases (56 percent).

Response: The opening and investigating of medical complaints requires appropriate documentation and tracking. As part of the new computer system being implemented, all citizen complaints received via e-mail, sister state disciplines and mandatory reports will be automatically logged and linked to the licensed physician's intradepartmental computer file. When cases are opened based on phone conversations or other non-computerized means, the Department will develop controls to ensure these cases are also logged into the system immediately upon receipt.

6. Make information related to mandatory reports closed by the Board prior to investigation available to assist in the investigation and prosecution of physicians who demonstrate patterns of behavior.

Findings: The 1997 program audit recommended that mandatory report information be available to investigators. Mandatory reports come from insurance companies, hospitals, agencies, boards, and others who take adverse actions against physicians.

Mandatory reports are received in Springfield by a separate unit. Each mandatory report is given a case number and entered into the RAES system. The Medical Disciplinary Board reviews these reports and must determine whether to investigate the physician's actions between 61 and 180 days after receiving the report. If the Board decides the physician's actions warrant an investigation, the mandatory report information is forwarded to Medical Investigations.

Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians

As part of the investigation, the investigator checks the RAES system for any prior complaints received and any disciplines issued for those prior complaints. Mandatory reports that were sent to Investigations by the Board can be reviewed by Investigations. Many mandatory reports (41 percent in 2004 and 2005) are not sent to Medical Investigations. Access to mandatory reports that are not referred for investigation is strictly limited – even the Acting Chief of Medical Investigations cannot access these cases. So the Department may have information that a physician has previously engaged in conduct the same as or similar to conduct currently under investigation and that information is not available to the investigator.

Response: On August 25, 2005, the Governor signed the Medical Malpractice Reform Bill (PA 94-677) which expanded the statute of limitations to include older Mandatory Reports for review and inclusion in investigative cases to show a pattern of practice. At the time of the audit period, which covered FY04 and FY05 and ended on June 30, 2005, information contained in prior Mandatory Reports would not have been admissible and therefore, were not made available to investigators.

When PA 94-677 became effective, the Department began the process of making prior Mandatory Reports available to investigators for inclusion in medical investigations cases.

Auditor Comment: Until this response, the Department had not indicated that it had been prohibited by law from using prior mandatory reports to determine whether a physician demonstrated a pattern of practice or other behavior which demonstrates incapacity or incompetence to practice under the Act. In fact, the Department concurred with a similar recommendation in our 1997 program audit. Further, even before Public Act 94-677, the Medical Practice Act provided that “[a]ny information reported or disclosed shall be kept for the confidential use of the Disciplinary Board, the Medical Coordinators, and Disciplinary Board’s attorneys, the medical investigative staff, and authorized clerical staff. . . (emphasis added)” (225 ILCS 60/23 (B)). However, as reported in this audit, such mandatory reports were not always made available to investigators.

Dec & Aug Responses: Through the ILES system, which has been fully implemented in the medical unit, all medical investigators and prosecutors have information related to past and current mandatory reports.

7. Take the steps necessary to assist the Medical Coordinators with backlogs and improve case timeliness.

Findings: The Department was experiencing problems with timeliness of cases due to backlogs at the Medical Coordinators. As of May 2006, the total number of cases at the Medical Coordinator’s office was 210, down substantially from 2003, and that some cases take over a year to be reviewed by the Medical Coordinators.

The auditors examined data from the Department to evaluate the time it took for the Medical Coordinators to review cases. In the data that was received for FY04 and FY05

**Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians**

there were 886 cases that had been sent to the Board. Medical Coordinators took an average of 100 days to review a case.

Response: As of July 1, 2006, there is no backlog at the Medical Coordinators level. For a portion of the audit period, there was only one Part-Time Medical Coordinator on staff. Since that time, the Department has hired an additional Full-Time Medical Coordinator and the number of cases at the Medical Coordinators level has been significantly reduced from nearly 600 to less than 200, which the Department does not consider to be a backlog.

The Medical Malpractice Act (PA 94-677), as amended on August 25, 2005, authorizes the Department to hire an additional Deputy Medical Coordinator to assist in case preparations which will further streamline the disposition of disciplinary cases. It is important to note that the Medical Coordinator's primary role is to ensure that when cases are sent to the Board for review, the cases are as complete as possible. In light of that, the Medical Coordinator may require additional investigation or medical records before presenting cases to the Board, thus extending the time a case is in the Medical Coordinator's control.

Aug Response: There is no backlog at the Medical Coordinator's level as there are 106 cases under review by the Chief Medical Coordinator. In 2003, the turnaround for a case under the Medical Coordinator's review was 145 days. In 2007, the turnaround is about 35 days.

8. Develop general criteria to help guide decisions in disciplinary actions. Such criteria would help to ensure that similar violations under similar circumstances receive similar discipline.

Findings: In Fiscal Years 2004 and 2005 the Department issued a total of 458 disciplines against physicians. Those disciplines included refusing to renew licenses, suspending or revoking licenses, reprimanding licensees or placing them on probation. The auditors questioned the adequacy or consistency of disciplinary actions for six cases that were reviewed where complaints were handled by the Department. At least 41 percent (189 of 458) of the disciplines were cases where the Department's discipline was based on actions taken by other states' disciplinary agencies, and therefore, required minimal departmental activity compared to other cases. In the 130 cases tested by the auditors, 83 (64 percent) were referred to Prosecutions for possible disciplinary action. The Department took disciplinary actions in 37 tested cases in Fiscal Years 2004 and 2005.

Most complaints that are referred to Prosecutions are resolved using the informal process pursuant to the Administrative Code. Even if a formal complaint is filed, the attorneys may try to resolve the case through an informal conference. If a discipline is recommended by the Medical Disciplinary Board member and accepted by the

Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians

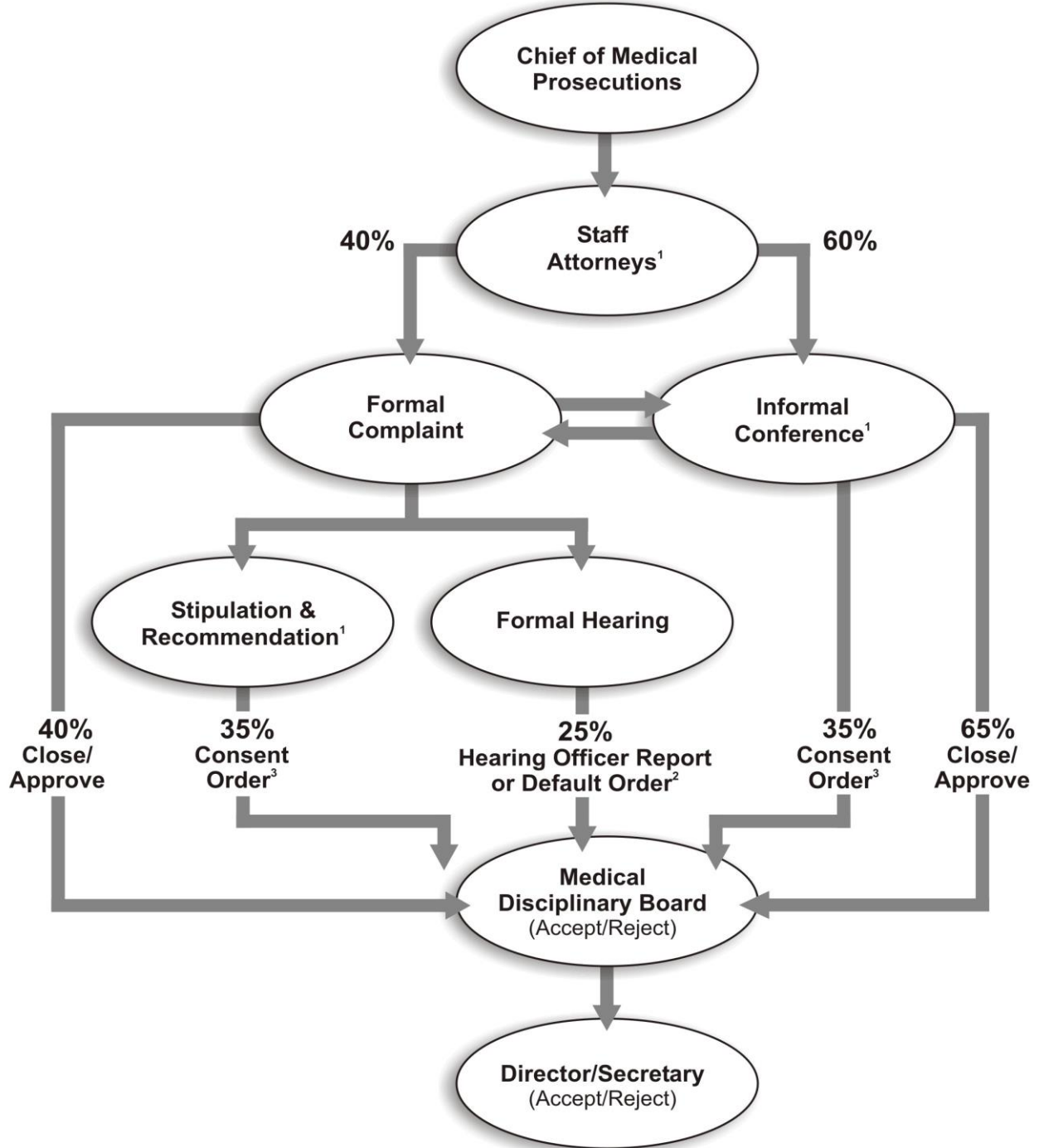
respondent physician, a stipulation and recommendation or consent order outlining the recommended discipline will be entered into.

The informal conference allows the Disciplinary Board member and prosecuting attorney to ask the physician questions about the alleged violation of the Act and to go over the evidence from each party, after which the Board member can make a recommendation for settlement. Present at informal conferences are the Department's prosecution attorney, the physician's attorney and/or the physician, and a member of the Board. If the recommended discipline is accepted, a consent order is drafted to be signed by all the parties present. Later the agreement is approved by the Board and eventually by the Director. The prosecuting attorney is there as an advisor to the Medical Disciplinary Board member, who may conduct the conference.

The most common violation type was sister state violations, where a physician who is licensed in Illinois also has a license in another state, and that state has taken disciplinary action against the physician. The next most frequent type involved medical issues.

If the physician's Illinois license is active, the case is sent to Investigations to obtain the disciplinary order from the other state. However, according to the Department, the investigation work required is minimal. If the Illinois license is inactive, then the case is referred directly to Prosecutions, which seeks a refuse to renew order. Such an order would prohibit renewing the Illinois license until proof of compliance with the other State's order has been provided to the Department.

FLOWCHART OF THE DISCIPLINARY PROCESS



Notes: ¹ Case can be closed at this stage for various reasons, including inadequate evidence. Case still requires Medical Disciplinary Board approval.

² Default orders happen when the physician does not show up for the hearing.

³ Approximately 95 percent of orders are resolved with a consent order.

Source: DFPR information summarized by OAG. Percentages are estimates provided by DFPR.

**Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians**

The auditors questioned the adequacy or consistency of disciplinary actions for six cases reviewed where complaints were handled by the Department. The auditors also noted that many of the actions taken were cases where minimal departmental activity was required compared to other cases. Of the 37 cases in our sample where disciplinary action was taken, 19 were sister state

Case Examples #2, #3, and #4 - Inconsistent

A case was closed before investigation in Complaint Intake that alleged two podiatrists advertising as "Dr." without the "DPM" after their names denoting they were podiatrists, not physicians and surgeons.

Fine to a chiropractor for not listing "DC" after his name when using "Doctor" in front of it. The public may think that the chiropractor had a medical license.

Discipline to an individual with a medical degree but no Illinois license for using "MD" after his name.

cases which involved minimal Department investigation or prosecution work compared to other cases. Examples of cases questioning the disciplinary actions are outlined.

Although the case reviews identified some problems with consistency of disciplines, the Department was unwilling to consider developing formal guidelines to help guide its decisions in disciplinary actions.

Department officials stated that the Board's legal counsel had frowned upon the Board drafting any such written guidelines.

Even though no written guidelines exist, the Board has used informal guidelines in some situations to determine appropriate punishments. During testing of 130 medical enforcement cases, the auditors noted differing fines and punishments given to physicians who failed to supply the Department with proof of their continuing medical education hours. The Chief of Medical Prosecutions stated that the amount of formal education hours each physician was missing. Formal guidelines for other types of disciplines would help ensure that Board disciplines are consistent and equitable.

Response: One of the most important functions of the Medical Disciplinary Board is to determine an appropriate discipline for those found to be in violation of the Medical Practice Act. The Board

Case Example #1 - Questionable

A physician was suspended for six months for engaging in an inappropriate relationship with a patient. The six months of suspension were served one month at a time with three month intervals in between where he was not suspended. The Department counted this as six suspensions.

Case Example #6 - Error

The wrong physician was disciplined after a sister state discipline was received from California. The physician involved had the same last name, but different first name, as the physician in the case we reviewed. The DFPR refuse to renew order for the wrong physician was issued March 2005. After we brought this issue to the Department's attention, the order was vacated in November 2005. Although both physicians had been licensed in Illinois, neither license was active when the error occurred.

Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians

is, by statute, composed of a range of medical and non-medical members who are required by the Medical Practice Act to carefully consider each case on its own merits and provide advice to the Director with regard to disciplinary matters.

Neither the Medical Disciplinary Board nor the Department has the authority to institute "sentencing guidelines." Should the General Assembly amend the Medical Practice Act providing for such authority, the Department would look forward to developing "sentencing guidelines."

Rather, the Department and the Medical Disciplinary Board make their decisions in disciplinary actions on a case by case basis. Their decisions are based on multiple factors including, most importantly, the evidence available to prove the allegations against a Respondent Physician. Each complaint received or instituted by the Department is unique and the investigative file and evidence obtained is different for each file. The Department and the Medical Disciplinary Board strive for consistency of disciplinary actions based on soundly investigated cases.

Auditor Comment: The Department is responsible for taking action against physicians who violate the Act. It is imperative that the Department be able to demonstrate that its actions are not arbitrary or capricious. General guidelines followed by appropriate documentation supporting its decision in each case would help establish the validity of the actions taken by the Department. While the auditors do not recommend "sentencing guidelines," we do recommend that the Department either follow general guidelines applying similar discipline to similar violations under similar circumstances or document its rationale for applying disparate disciplines. In the absence of such guidelines and documentation, the general public may view the Department as treating some physicians who violate the Act more favorably than others. Further, development of such guidelines is within actions necessary and proper to administer the Act, is consistent with the breadth and scope of other policies developed by the Department, and may not require specific legislation to implement. As noted by the Department in its response to Recommendation 10, it has the "power and duty to formulate rules and regulations necessary for the enforcement of any Act administered by the Department." Therefore, we continue to recommend, as we first did in the 1997 program audit, that the Department implement general guidelines for physician disciplines.

Dec Response: The Department has requested that the medical disciplinary board make recommendations concerning general criteria regarding its disciplinary decisions which can be incorporated into the rules governing the medical practice act.

Aug Response: The Division is working with the Medical Disciplinary Board to set up guidelines for cases. These guidelines will be advisory in nature and the Board will use them to ensure consistency and fairness. The Director of Professional Regulation has been working with the Medical Disciplinary Board on the creation of appropriate guidelines. The Board has agreed to work with the Department on the Guidelines.

**Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians**

In the interim the Director has set Department temporary guidelines. Some of the guidelines include the elimination of non-disciplinary orders for practice-related issues and the levying of fines on most disciplines.

9. Assure that complaints received about out-of-state physicians are forwarded to the licensing board of the appropriate state.

Findings: There were five complaints in the sample where little work was done and the Department had not referred cases to investigations because the physicians were out of state and did not hold Illinois licenses. In each case, the complainant was told to contact that state's medical licensing board. There is no evidence that the Department forwarded the complaint to the appropriate state's licensing board.

Response: By statute, the Department has jurisdiction only over physicians licensed in Illinois and for the licensed physicians' actions that occur within Illinois. The Department has no statutory authority to institute cases for events involving physicians licensed, or actions that occurred, in other states. Records indicated that only five (5) of the total number of complaints received were about out of state physicians. In lieu of implementing this recommendation, the Department has provided all staff of the Intake Unit with a list of Medical Boards throughout the United States so that citizens can be directed to appropriate State's Complaint Intake Unit.

10. Develop procedures for involving people making complaints in the disciplinary process.

Findings: The Department has not implemented procedures to involve people making complaints in the disciplinary process, as recommended in the 1997 audit of physician disciplines and as required by the Medical Practice Act of 1987. The Act states that . . . *both the accused person and the complainant shall be accorded ample opportunity to present in person, or by counsel, such statements, testimony, evidence, and argument as may be pertinent to the charges or to any defense thereto.*

According to Department officials, the Department does not represent the complainant. Once a complaint is filed with the Department, it becomes the complainant, not the person who filed the original complaint.

The person making the complaint is involved only as a witness if the case goes to formal hearing. The testimony serves as evidence to prove a case. The Department contacts them if they are required to testify at a formal hearing. Further, the Department's response states that the nature of Department investigations is confidential and investigative documents are confidential by statute; therefore, that information cannot be disclosed unless a formal complaint is filed.

Response: To the extent allowed by statute in the Illinois Medical Practice Act, pursuant

Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians

to 225 ILCS 60/37, the Department does involve complainants in the disciplinary process. In order to protect the privacy of the complaining party and the due process of the physician under investigation, the Department is limited in the extent to which it can share information.

Under the Illinois Medical Practice Act, “at the time and place fixed in the notice, the Disciplinary Board provided for in this Act shall proceed to hear the charges and both the accused person and the complainant shall be accorded ample opportunity to present in person, or by counsel, such statements, testimony, evidence and argument as may be pertinent to the charges or to any defense thereto.” See Section 225 ILCS 60/37. The “notice” referenced to in this section of the Act is attached to every formal complaint filed by the Department in the form of a Notice of Preliminary Hearing. Once a Notice of Preliminary Hearing and Formal Complaint are filed, the Department’s allegations against the Respondent Physician become public¹ and litigation begins. Once a case is scheduled for a Formal Hearing before the Medical Disciplinary Board and Administrative Law Judge, the Department issues subpoenas to all witnesses it will call. If a case is received by way of a Mandatory Report, the Department will subpoena its expert witness and the patient involved. In the majority of cases received by way of Mandatory Reports, the patients are no longer living or they do not wish to cooperate with the Department’s case. If a case is received by way of Citizen Complaint, the Department will subpoena the complainant to testify.

¹ Patients’ identities are never identified and are referenced to in a Formal Complaint by initial only.

Under the Illinois Medical Practice Act, “all information gathered by the Department during its investigation including information subpoenaed and the investigative file shall be kept for the confidential use of the Secretary, Disciplinary Board, the Medical Coordinators, persons employed by contract to advise the Medical Coordinator or the Department, the Disciplinary Board’s attorneys, the medical investigative staff, and authorized clerical staff, as provided in this Act and shall be afforded the same status as is provided information concerning medical studies in Part 21 of Article VIII of the Code of Civil Procedure, except that the Department may disclose information and documents to a federal, State, or local law enforcement agency pursuant to a subpoena in an ongoing criminal investigation.” As such, the Department is prohibited from sharing any information related to the investigation of a complaint received by it to anyone except those listed in Section 60/36. The list does not include complainants.

The practice of the regulated professional, trades, and occupations in Illinois is hereby declared to affect the public health, safety and welfare of the People of the State of Illinois and in the public interest is subject to regulation and control by the Department of Financial and Professional Regulation. See the Civil Administrative Code of Illinois, 20 ILCS 2105-10. The Department represents the “People of the State of Illinois.” The Department does not represent individual complainants. For this reason, the Department cannot involve complainants in settlement negotiations.

**Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians**

The Department has the power and duty to formulate rules and regulations necessary for the enforcement of any Act administered by the Department. See the Civil Administrative Code of Illinois, 20 ILCS21/05-15(a)(7). Under this authority granted by the Civil Administrative Code, the Department implemented Rule 1285.220 of the Rules for the Administration of the Medical Practice Act which states:

- a) An informal conference is the procedure established by the Division to resolve complaints, licensing issues, or conflicts prior to initiating any action requiring a formal hearing. Informal conferences are for the purposes of compliance review, fact finding, and discussion of the issues.
- b) Notice of an informal conference shall be sent to the respondent not less than 10 days before the conference is scheduled. The notice shall include a brief statement of the alleged violations.
- c) Informal conferences shall be conducted by a Division attorney and shall include a member of the Disciplinary Board or his or her designee.
- d) The respondent may bring an attorney or other representative to the informal conference.
- e) The respondent shall have an opportunity at the informal conference to make an oral statement and to present any documents that might be relevant to the matter.
- f) Results of Informal Conference. The informal conference shall result in one or more of the following recommendations being made to the Board:
 - 1) The case be closed.
 - 2) The case be investigated further.
 - 3) A consent order be entered.
 - 4) The matter be referred for a formal hearing.

The informal conference process is analogous to a settlement conference. The informal conference process could not allow for the complainant to be involved because it would be in violation of Section 60/36 which prohibits the Department from sharing information obtained through the Department's investigation.

The process of litigation inherently involves settlement negotiations and the Department engages in settlement negotiations in the process of litigation. Settlement negotiations are not mandated by the Illinois Medical Practice Act. Settlement negotiations should not be mandated or regulated by statute because there may be times where the Department does not want to engage in settlement negotiations. For example, if the allegations against a Respondent Physician are so egregious and the Department's evidence is overwhelming and/or substantial, the Department will not want to enter into settlement negotiations.

**Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians**

For the reasons stated above, the Department does sufficiently involve the complainant in the disciplinary process to the extent that it is allowed under the law. Should the General Assembly amend the Medical Practice Act to further involve complainants in the disciplinary process, the Department would look forward to implementing this procedure.

Auditor Comment: Contrary to the Department's assertion, the Department does not have a process to involve people making complaints in the disciplinary process. The Department also notes limitations to the complainant being involved in the process unless the Department subpoenas them as a witness. Involving the complainant by subpoena, at the Department's discretion, does not accord the complainant the "ample opportunity" required by statute. Regardless of the elements that make involving the complainant in the disciplinary process difficult to implement, the Medical Practice Act of 1987 still requires:

. . . at the time and place fixed in the notice, the Disciplinary Board provided for in this Act shall proceed to hear the charges and both the accused person and the complainant shall be accorded ample opportunity to present in person, or by counsel, such statements, testimony, evidence and argument as may be pertinent to the charges or to any defense thereto. (225 ILCS 60/37)

In summary, the General Assembly has already directed the Department to involve the complainant in the disciplinary process and the Department should amend its current practices to do so.

Aug Response: The Department has established the position of and hired a Patient Advocacy Liaison to assist patient-complainants throughout the disciplinary process.

11. Develop and implement management controls to ensure that Prosecution activities are timely and properly documented.

Findings: The Department had not established timeliness standards for Prosecutions and experienced timeliness problems with cases taking an average of 258 days after referral to Prosecutions to reach final resolution. The 1997 audit of physician disciplines recommended that the Department establish management controls to ensure that prosecutions were conducted timely. The Department's Enforcement Manual did not contain any timeliness standards.

For the 83 closed Prosecution cases the auditors sampled, the days in Prosecutions ranged from 1 to 1,223 days. Of the 43 cases that resulted in an order by the Department, the shortest time in Prosecutions was 42 days from the date referred to Prosecutions through the date of the signed order; the longest time for these 43 cases was 1,192 days.

**Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians**

Case Example 7 - Untimely
Doctor moved out of state and was allegedly not providing records to former patients when requested for further treatments they needed. Assigned to an attorney 5/22/03, informal conference notice sent 8/27/03. Then no activity until another attorney assigned 4/6/04. Case closed without action 7/30/04.

Case Example 8 - Untimely
Mandatory report of death of 48 year old male due to alleged failure to monitor blood loss during surgery. Case assigned to attorney 3/6/03. Next activity recorded in RAES is 2/19/04. Only 1 more activity recorded until case closed without action on 11/3/04.

Response: The medical case tracking system will be upgraded to the same case tracking system used by the other professions regulated by the Department. As an additional safety measure under the upgraded system, the Department will be developing an automatic alert for the Chief of Medical Prosecutions that a specific action needs to be taken.

However, because the life of a case in prosecution and litigation is typically dominated by factors out of the control of the prosecution attorney, the Medical Practice Act and its governing Rules are intentionally silent relating to specific timeframes for documentation. Just some of the factors that exclude the feasibility of specific timeframes for documentation include the schedules of the Medical Disciplinary Board Members, the schedules of the Respondent Physicians and/or their attorneys and the Administrative Law Judges' court docket.

Except for the specific statute of limitations dates, neither the Illinois Medical Practice Act nor the Rules for the Administration of the Medical Practice Act specify a particular timeframe for the completion of prosecution activities or documentation of prosecution activities. The Department has implemented management controls to ensure that Prosecution activities are timely and properly documented. Medical Prosecutions staff have not missed any statutes of limitations nor failed to file necessary documents in a timely manner. Most importantly, the Medical Prosecutions staff has not placed the People of the State of Illinois in jeopardy for failing to timely and properly prosecute a Respondent Physician.

In spite of the schedule constraints enumerated above, the Department has efficiently managed its medical prosecutions caseload. The auditors have even found in their sample of cases that a case in prosecutions took an average of 258 days, which is less than one year. Even more telling is that the State of Illinois Department of Financial and Professional Regulation has risen from 46 to 18 in ranking for the nation in number of disciplinary actions taken against Physicians as determined by the independent watchdog group *Public Citizen*. Also, according the Federation of State Medical Boards of the

**Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians**

United States, the total number of actions taken against Physicians in 2000 was 110 and in 2005 the total number of actions taken against Physicians rose to 281 disciplines.

Auditor Comment: Auditors recognize that there are elements related to the timeliness of prosecutions which are outside of the Department's control. However, having management controls to encourage timeliness and to ensure proper documentation is essential. Case examples show that there were cases with long periods with no documented activity. The Department asserts that the Medical Prosecutions staff has not placed the People of the State of Illinois in jeopardy for failing to timely and properly prosecute a Respondent Physician. However, long periods of time with no documented activity and no documented reason for that inactivity do create the risk that people of the State of Illinois could be in jeopardy from an incompetent physician who continues to practice.

The Department alludes to recent improvement in its ranking among state medical boards since 2002. Some of this improvement appears to come from the Department's new policy, implemented in 2004, of using Refuse to Renew orders as disciplines. This type of order is placed on sister state disciplines where the individual's Illinois license is non-renewed or inactive. As a result, these are not disciplines on active licenses. Rankings the Department cites are based on serious actions per 1,000 active physicians. The Department issued 45 refuse to renew orders in FY04 and 128 in FY05 for a total of 173 or 35 percent of disciplines for the two years as is shown in Exhibit 3-2 in the report. Because we do not know what data other states report, we do not know whether only Illinois includes Refuse to Renew orders on non-active licenses in its discipline statistics or if it is a common practice among the states.

Dec Response: The Department has implemented management controls to ensure that prosecution activities are timely and properly documented. Monthly reports are provided to each prosecutor to track case activity.

Aug Response: Case reviews with medical prosecutors are conducted on a monthly basis by the Chief of Medical Prosecutions. As a result of the monthly case reviews, cases in prosecutions are more closely monitored to ensure that timelines are met, that activities are properly documented and, most importantly, that cases are timely and efficiently litigated. In one year, the total number of cases in the medical prosecutions unit has gone from approximately 600 to 480 as a result of these management controls. At the same time, the Illinois Department of Financial and Professional Regulation was ranked 12th in the nation for the rate of state medical boards' serious disciplinary actions.

- 12. Devote sufficient resources to ensure that physicians' compliance with terms of disciplinary orders are adequately monitored, including that physicians who have had their licenses suspended or revoked are not practicing. Furthermore, ensure that probation files contain all required documentation and that staff follow up when required documentation is not submitted.**

Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians

Findings: The Department of Financial and Professional Regulation has not dedicated sufficient resources to carry out its Probation Compliance responsibilities. The Division of Professional Regulation has **only two** Probation Compliance investigators for the entire State for over 100 professions regulated by the Division. As of April 2006, these two employees of the Probation Compliance Unit were monitoring a total caseload of approximately 1,100 cases, of which approximately 150 were physician discipline cases.

The Department is not adequately monitoring disciplined physicians. Monitoring deficiencies were noted in **all** of the 25 medical probation cases selected for testing. In 9 cases, most of which involved physicians who had their licenses suspended or revoked, the Department could not provide a file or any other evidence of Probation Compliance monitoring. In 12 other cases, the files provided lacked evidence to show that some or all of the required monitoring had occurred.

Lack of monitoring to verify that physicians are complying with the terms of disciplinary orders can undermine the effectiveness of the Department's regulatory efforts as well as compromise the public's safety and well being. Deficiencies we identified fell into the following categories which are not mutually exclusive; as a result, some cases had more than one of the following deficiencies:

- In 9 cases, the Department could not provide a file or any evidence of Probation Compliance monitoring. Most of these cases involved physicians who had their licenses suspended or revoked.

Among the 16 cases where files were provided:

- In 12 cases, files lacked evidence to show that some or all of the required monitoring had occurred.
- In 9 cases, there was no evidence that an initial interview was conducted within 30 days as required by the Department's Enforcement Manual.
- In 9 cases, files did not contain evidence of supervisory review.

In the OAG program audit released in 1997, the auditors recommended that the Department develop controls to ensure that Probation cases were properly monitored and establish procedures for operation of the Probation Compliance Unit. The auditors also recommended that the Department ensure that physicians whose licenses have been suspended or revoked were not continuing to practice. In June 2000, the Department updated its Enforcement Manual, which contains specific guidelines on these issues for Probation investigators.

**Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians**

While directives were established, as discussed in the following sections, problems identified in the 1997 audit regarding probation monitoring remain.

The auditors found no evidence that Probation staff were performing any follow-up actions to attempt to ascertain that physicians whose licenses had been suspended or revoked were not continuing to practice. Not undertaking efforts to check for practicing physicians who have had their licenses suspended or revoked not only results in noncompliance with Departmental policy, but also increases the risk to the general public.

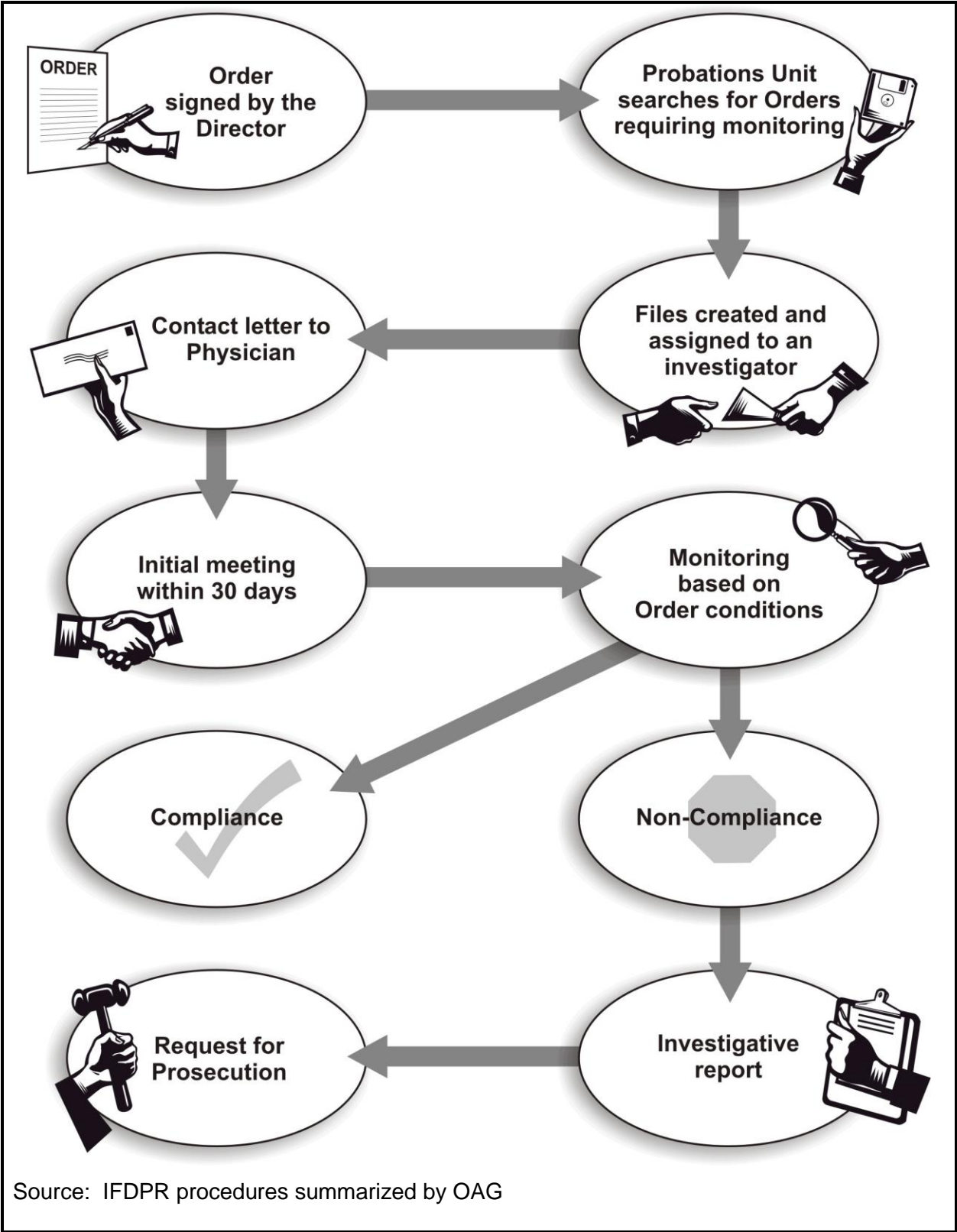
On the following page is a flowchart of the Probation Compliance Unit Process.

**EXAMPLES OF ORDER CONDITIONS
REQUIRING PROBATION MONITORING**

- Alcoholics Anonymous Meetings
- Caduceus Meetings
- Aftercare Program
- Urine Drug Screenings
- Supervised Work
- Psychiatrist/Psychologist Treatment
- Revocation
- Suspension
- Continuing Education
- Random Breathalyzer Tests

Source: OAG analysis of Probation Compliance case files and DFPR Enforcement Manual.

**Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians**



**Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians**

Of the 16 cases sampled where a file was provided, 75 percent (12 of 16) of case files lacked evidence to show that some or all of the required monitoring had occurred. Inadequate monitoring included instances where follow up was not conducted when required documentation was not submitted to the Department. Documentation missing from files included:

- Quarterly reports of the respondent's condition as required by the order from a psychiatrist, a primary care physician or a practice monitor,
- Drug screen results, and
- Proof of completion of past due and additional continuing medical education hours or that such hours were pre-approved by the Medical Coordinator.

- One order, dated November 20, 2003, required the physician to maintain a practice monitor to review patients and charts and to submit a quarterly report to the Department on his findings.

Probation Case Example 1

A physician was disciplined for: dishonorable, unethical or unprofessional conduct of character likely to deceive, defraud or harm the public; prescribing, selling or administering drugs to patients without examining them; and promoting the sale of drugs to exploit patients for financial gain.

The physician's license was suspended for one year and his controlled substance license suspended for a minimum of five years. The suspension was to be followed by probation, continuing medical education, and quarterly reports.

No Probation activity was documented until 7 months **after** the order was signed, or more than halfway through the one-year suspension of the license. In addition, the investigator did not follow up when the continuing medical education requirements were not met and a quarterly report was not submitted. A Violation of Probation was only done **after** the physician pled guilty to 2 counts of mail fraud and was sentenced to 5 months confinement and a \$70,200 fine.

Probation Case Example 2

The Department issued an order on a sister state case on July 15, 2003. The Illinois order placed the physician on Probation and required reports required by the sister state to also be submitted to Illinois. The other state's order was not in the file and the Department was unable to provide it. No activity was documented in the file that any reports were received.

The case was closed before the Department received notification that the other state's order had been satisfied. The Department closed the case on January 5, 2004. On February 2, 2004, the Department received notice that the other state's probation had been satisfied.

The only follow up to ensure a practice monitor was maintained was in August 2005 after the Department received a report that the physician was not in compliance with the Aftercare Agreement. As of May 2006, the physician had still not obtained a practice monitor as ordered on November 20, 2003.

**Program Audit
 Department of Financial and Professional Regulation's
 Disciplining of Physicians**

- Four files lacked documentation to show completion of continuing medical education (CME) hours or that the Probation Compliance investigator followed up to ensure they were completed. Two cases originated from a Department CME audit during the August 1, 1999 through July 31, 2002 licensing cycle. One case was noted in Case Example 1, above. This physician was ordered on June 26, 2002 to complete an additional 50 hours of CME in the area of Prescribing Controlled Substances and Pain Management Control. The last physician was ordered on June 15, 2004 to complete 20 hours CME pre-approved by the Medical Coordinator within one year of the order date. The Department subsequently reported it has placed pre-approval in the file; however, the physician has not submitted documentation to show the hours have been completed in the allotted time.
- One file had no documentation of activity in the file after July 15, 2005; no quarterly reports, no indication that file has been closed or reports were no longer required. According to the Department, the case was reassigned in July 2005 and appears to be in non-compliance.

Our review of Probation case files also found that documentation was either not collected or was missing from case files. Exhibit 4-3 shows examples of documentation that were missing from case files that we reviewed. According to the Chief of the Probation Compliance Unit, the system allows them to enter follow up dates for the next date a report is due; however, there is no policy in place or practice to print or check reports of follow up dates on a regular basis.

Response: The Probation Unit monitors all of the professions regulated by the Department. Due to increased enforcement activity in all of the professions that the Department regulates the Department has contracted with a Third Party Administrator to facilitate the scheduling, collection and testing of urine samples for drug and alcohol testing. This program is fully funded by the probationers that are being tested. Once this program is fully functional, employees in the Probation Unit will have more time to dedicate to scheduling, monitoring and overseeing other probationary responsibilities.

Dec Response: The Department hired an additional investigator in October 2006. Along with a temporary worker, the unit has since eliminated the backlog of entries for quarterly probation reports received.

Aug Response: The Probations Unit is current on the entries for the filing of Quarterly Reports despite the following increase in cases being monitored by Probations:

August 2006		August 2007	
Probation Total:	919	Probation Total:	1,017
Medical Total:	158	Medical Total:	226

**Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians**

13. Take actions to ensure that initial interviews are conducted within 30 days and adequately documented and that files receive appropriate supervisory review.

Findings: In 56 percent (9 of 16) of cases with a file, there was no evidence that an initial interview was conducted within 30 days.

Response: The Department will take appropriate steps to update our policies and procedures.

Dec Response: The Department has hired an additional probation compliance investigator to ensure that initial interviews are conducted and adequately documented within 30 days.

Aug Response: Probation Unit Investigators make contact with the probationer within the first 30 days. If contact is not possible within the first 30 days, the reason is documented. Probations has now standardized its Intake forms. This change will be reflected in the updated Enforcement Manual.

14. Make Administrative Rules relating to the definition of disciplinary and non-disciplinary actions consistent with requirements of the Medical Practice Act.

Findings: The Department of Financial and Professional Regulation maintains a website to provide public access to license status and discipline information on physicians. This information, which has been provided on the Department's web page since 2001, provides information to the public on physician disciplines.

However, the Department's monthly reports, which reported on the disciplinary actions taken by the Department, were not accurate. The auditors identified at least 41 disciplines of physicians that the Department did not include in its monthly reports in Fiscal Year 2005. In addition, there is some conflict about what reportable disciplinary actions include. The law requires publication of all disciplinary actions while Administrative Rules distinguish between disciplinary and non-disciplinary actions, with non-disciplinary action not being published.

Several sections of the Medical Practice Act were amended by Public Act 94-677 including: changing the membership of the Medical Disciplinary Board and increasing the number of public members; adding a new Deputy Medical Coordinator; increasing the number of medical investigators to assist with processing cases, and requiring new detailed physician profiles which will supply additional information to the public about physicians. The auditors recommend that the Department continue its efforts to implement these new requirements.

The Department maintains a website to allow the public to look up license status and discipline information on physicians. The Department distinguishes between disciplinary and non-disciplinary actions, and non-disciplinary actions are not published in Department

**Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians**

Reports. Correspondence from the Department shows the only non-disciplinary actions not reported are administrative warning letter/letter of concern or a fine/CME where no discipline was recommended. However, according to the Department's internal Report of Orders Signed by the Director, disciplines include fine, probation, refuse to renew, reprimand, revocation, suspension and summary suspension. Other actions are considered non-disciplinary orders between the Department and the physician. According to the Department, non-disciplinary orders are not reportable to the National Practitioner's Data Bank and they are not reported to the public on the monthly reports. In addition, cease and desist orders are listed as non-disciplinary on the Department's internal reports; however, they **are** included in monthly reports, both printed and on the web.

Response: Though the Medical Practice Act and its Administrative Rules differ on reportable disciplinary actions and non-disciplinary actions, the Department has been consistent in reporting its monthly disciplinary actions per the Administrative Rules. The Department would look forward to working with the General Assembly to develop the Administrative Rules relating to the definition of disciplinary and non-disciplinary actions so they are consistent with the requirements of the Medical Practice Act.

15. Ensure that the public is fully informed of Department disciplinary actions on a timely, accurate, and consistent basis.

Findings: The Department's website includes monthly disciplinary reports which list disciplinary actions for all professions for that month. As of early May 2006, the Department had reported disciplines through March 2006. The Department does not report all disciplinary and non-disciplinary actions to the public via monthly reports. The actions not reported include: 1 denial, 1 probation, 1 probation and fine, 1 suspension, 3 surrenders, 6 refuse to renews, 31 fines, and 64 others. Disciplines not reported were errors and should have been reported to the public. Non-disciplines not reported are due to definitional conflicts between the Medical Practice Act and Administrative Rules.

In addition, the Department's reporting is inconsistent. Non-disciplines such as "surrender" and "other" are not reported to the public via monthly reports; however, "cease and desists," which are listed as a non-discipline on the Department's internal reports, are reported to the public. Violations of the Act worthy of a reprimand, which is a discipline not affecting the license in any way, are reported to the public; however, violations of the Act worthy of a fine are **not** reported to the public.

Response: The Department issues monthly disciplinary reports with brief descriptions of actions taken by the Medical Unit and all other professions licensed by the Division of Professional Regulation. In addition to providing the report on-line, it is sent directly to persons who request to be added to the monthly subscription at no cost. Finally, due to improvements in the records unit, electronic copies of the public case file can be provided to anyone seeking additional information about a case.

**Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians**

As reflected in the Auditor General's notes, the Department was successful in getting the Civil Administrative Code amended to reflect the current practice. The Department is continuing to push for changes to the Medical Practice Act to reflect this requirement. Additionally, the Department is pursuing additional levels of review to ensure that public reporting procedures are accurate.

16. Send required summary reports of final actions taken upon disciplinary files to every licensed health care facility, medical association, and liability insurer as required by law.

Findings: The Department, through the Medical Disciplinary Board, did not send bi-monthly discipline reports to specified health care organizations as required by the Medical Practice Act of 1987. The Department currently makes a monthly disciplinary report available online for anyone to download. The publication is made available upon request and payment of fees; however, the Department does not send the report to every licensed health care facility, medical association and insurer as required by the law.

Response: The Department provides a monthly disciplinary report of final actions taken upon disciplinary files which is available either upon request or online at the Department's website. Current law mandates that the report be sent to every licensed health care facility, medical association and insurer as required by law. However, the current law was written and adopted decades before the availability of current technological advances the Department utilizes such as the World Wide Web and/or email. Therefore, the Department acknowledges that we are out of "technical compliance" with this provision of the law; however, we are in compliance with the *intent* of the law, which is to make disciplinary information available to the public and health care employers.

The Department, in conjunction with the Illinois Medical Society, has sought and will continue to seek an amendment to legislation (SB 360) that will abolish the requirement that summary reports be mailed to every licensed health care facility, medical association and insurer. The new law will instead require the Department to post the summary reports on its website for immediate viewing. The Department, while awaiting the outcome of the new legislation, will continue to post the monthly disciplinary reports on its website and will also send the link via email directing its intended receivers to the monthly report. With the passing of the new legislation, the Department will administer the newly enacted requirements for posting the monthly disciplinary report.

Aug Response: Legislation passed and is awaiting the Governor's signature.

17. Continue to work to comply with amendments to the Medical Practice Act, including promulgating rules to accomplish the requirements.

Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians

Findings: The Department has not yet implemented several significant requirements of an important new law relating to physician regulation and discipline. Provisions that have not been implemented include:

- **Membership of the Medical Disciplinary Board** - the Medical Disciplinary Board membership is increased from 9 to 11 members. The current Board consists of seven members. Since the Board was already missing the two public members required under the old provisions, now it is missing four public members. The Department is awaiting the Governor's appointment of these positions.
- **Deputy Medical Coordinator** - as of May 2006, a second Deputy Medical Coordinator had not been hired.
- **Number of Investigators** - the Act now requires one full-time investigator to be employed for every 2,500 physicians licensed in the State. With 18 full-time investigators, the Department nearly meets this requirement based on 45,583 active licenses in June 2005. One additional investigator would be needed to meet the new standard.
- **Physician Profile** - a new section is created requiring a physician profile called the Patients' Right to Know Law. It requires the Department to make a profile on each physician available to the public on an Internet website.

In addition, the Public Act required that the Department promulgate such rules as it deems necessary to accomplish the requirements of the Act. As of May 2006, no rules have been drafted.

Response: The Medical Malpractice Reform Bill (PA 94-677) was signed by the Governor on August 25, 2005. The Department has taken significant and appropriate steps to comply with all provisions of the new legislation. The Department worked with the Administration and key sponsors of the bill to ensure that it included provisions sought by the Department, including a lengthening of the statute of limitations and additional authority to expand its investigative authority. As a result, the Department has acted quickly to begin implementing the amendments to the Medical Practice Act and will continue to do so.

18. Continue to work to make available to the public, through the Internet, and, if requested, in writing, a profile of each physician licensed by the Department as required by law.

Findings: The Department has not made available to the public a profile of each physician including:

- Physician's full name,
- Criminal convictions within the last 5 years,
- Department final disciplinary actions within the last 5 years,
- Final disciplinary actions by licensing boards in other states in the last 5 years,

Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians

- Description of loss or involuntary restriction of hospital privileges or resignation from privileges from a case related to competence or character, within the last 5 years,
- All medical malpractice judgments, arbitration awards, and settlements in which payment was made to a complaining party within the last 5 years. Judgments on appeal are to be so marked, and disclaimers about claims being settled but not necessarily reflecting on the competence or conduct of the physician are to be included as well,
- Names of medical schools attended and the dates of attendance and graduation,
- Graduate medical education,
- Specialty board certification, including the toll-free number of the American Board of Medical Specialties for verification,
- Number of years in practice and locations,
- Names of hospitals where the physician has privileges,
- Location of the physician's primary practice,
- Identification of any available translating services at the primary practice location, and
- Whether the physician participates in Medicaid.

The Disciplinary Board is to collect the information and to provide the completed profile to the physician before it is released to the public. The physician is provided 60 days to correct any factual inaccuracies. While the Public Act was effective August 2005, the Department has not made available to the public a profile of each licensed physician.

Response: The Department maintains an internet website through which the public can learn the licensure status of a physician licensed in Illinois. In fact, the data is deemed so accurate it can be used, by law, to prove a licensee's status for purposes of employment. The website also allows the general public to view press releases, alerts, disciplinary actions and licensing requirements. The Department has been responsive in taking advantage of new technologies as required so that the citizens of Illinois have information they need as quickly as possible through such vehicles as the Department's website. The Medical Malpractice Act (PA 94-677) was signed by the Governor on August 25, 2005, requiring the posting of physicians' profiles on the Department's website. The Department has found that stock software available on the market would not provide the capacity and flexibility needed to post profiles as required by law, and has begun to develop the program required to fulfill the statute's requirements. With this new technology and information, the Department will be an exceptional resource for the citizens of Illinois as well as the larger public.

Aug Response: Phase one of implementation of the Physician profile database is complete. The database is up and running and ready for Phase two. Phase two is the physician information gathering to populate the database. As a result, letters have been sent to all licensed physicians informing them of their obligation to supply the Department with information required by statute for the Physician Profile data bank. The letter will give

**Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians**

each physician his/her own password to access the system. Per the Rules, the physicians will have 60 days to complete the process.

As a result, the database system will go live December 1, 2007. A second letter will go out on November 15, 2007 to physicians who do not comply. Thereafter, disciplinary procedures will be instituted against noncompliant physicians.

19. Work to assure that all members, including public members, are appointed to the Medical Disciplinary Board as required by the Medical Practice Act.

Findings: None of the four public members of the Medical Disciplinary Board have been appointed, and since March 2005 the Board has had no public members. The Department is awaiting the Governor's appointment of these positions.

Response: The Department will work to assure that any vacant position on the Medical Disciplinary Board, including those for public members, is filled as allowed by the determinants of the selection and appointment process. Any state advisory board member is typically selected for his or her contributions and professional expertise in a chosen field as well as other achievements. The process of nomination, selection and appointment for any state advisory board is rigorous. Though many are considered, only a few can be selected for their outstanding qualifications to serve.

Aug Response: Currently the Medical Disciplinary Board consists of one public member. There are two additional candidates finalizing their paperwork. It is anticipated the board will have three public members by October 2007.

20. Sufficiently document decisions and activities. Ensure that the replacement system for the Regulatory Administration and Enforcement System has the capability to help management better control the adequacy of the Enforcement process.

Findings: The Department has a number of problems related to properly documenting the decisions made related to physician disciplines. These problems exist in both paper files units and in the agency's computer systems and include missing files and lack of consistent or adequate documentation. Previous OAG audits have noted similar problems for at least 13 years.

In a sample of 130 total cases in Investigations and Prosecutions, the Department could not provide case files related to 7 cases and for 2 additional cases most of the information was missing. There were also six cases in the Probations sample of 25 cases where the physician's license was suspended or revoked and no Probations file existed.

**Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians**

Besides the missing files, there are no procedures or policies on what activities must be entered into the Regulatory Administration and Enforcement System (RAES), and information in the system is not always consistent with information in the paper case files. Previous OAG audits since 1991 have identified problems with Professional Regulation's documenting case activity in computer systems.

In the cases the auditors examined, different individuals recorded different activities and did not always record the same activities in the same way. For example, most investigators recorded the receipt of correspondence, while prosecutors did not. The auditors had problems verifying many Prosecution activities because Prosecution files are not required to contain much information to support the RAES entries and because no standard exists for what should be documented.

According to officials, Prosecutions is not required to maintain documents to show how decisions were made for closed cases that can be found elsewhere, in other various units of the Department. The auditors noted that other activities were not adequately documented in case files, including medical records and the decisions to close cases. Investigative files did not contain the Medical Coordinator's opinions, even when the opinion resulted in case closure.

After an investigation is completed, the case is sent to the Medical Coordinator for review. In 18 of 47 Investigations cases sent to the Medical Coordinator, the Coordinator recommended closure of the case and the case was subsequently closed without referral to Prosecutions. However, none of the files contained the Coordinator's opinion to show the reason the case was closed after the investigation and not referred to Prosecutions for disciplinary action. Officials stated that all opinions are kept in a separate file by the Medical Coordinator rather than in individual case files. Consequently, the reason for closing the case is not documented anywhere in those case files but may be documented in files maintained in other departmental units.

Medical records obtained by investigators were not always provided for the files requested. If medical records are voluminous, the records are put into a separate file, called a document file, to be kept with the investigative file.

Physician Regulation does not have central files to document decisions in physician discipline cases. To determine all the activity on a particular case the auditors found that case documentation was spread among multiple files that needed to be examined. Each Enforcement Unit has a separate file – Investigations, Prosecutions, and Probations. In addition, if a formal complaint is filed, there is the Administrative Services Unit file which contains legal documents filed in the case; the Medical Coordinator's file containing the opinion on the case; and the Board file where closure memos are kept if the case did not result in discipline. The exhibit to the right shows various locations where files are maintained related to physician disciplines.

**Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians**

Previous audits have also found problems in documentation of case activities. The Fiscal Year 2004 and 2005 audits reported that Enforcement activities were not performed timely or not sufficiently documented.

The Department is in the process of converting from its current enforcement system RAES, to another, called the Illinois Licensing and Enforcement System (ILES). According to Department officials, ILES will be able to better document activities because it will be able to capture computer-created documents. The conversion is currently about two years behind schedule, and Medical Enforcement is one of the last units to undergo the conversion.

Response: The Department is in the process of upgrading its computer system from RAES (Regulatory and Enforcement System) to ILES (Illinois Licensing and Enforcement System). Because ILES software expands RAES' capacity to monitor adequacy and performance of enforcement processes, the Department will be able to develop even better management controls. The program contains a database, word processing and case document retaining system which allows the Department to automatically document and track files and cases for all of its professions.

VARIOUS PHYSICIAN REGULATION FILE LOCATIONS	
RAES	
Complaint Intake	
Administrative Services Unit (Public File)	
Investigations	
Prosecutions	
Medical Coordinator	
Medical Disciplinary Board Official (Record Services in Springfield)	
Student Loans	
Child Support	
Enforcement Administration (MR, CME, and some sister states)	
Source:	DFPR information summarized by OAG.

Because of the sensitive nature of the medical documents and cases, the Department's IT unit will continue to develop the ILES program for implementation and transference of the professions under the Medical Practice Act in stages. Already being developed for future implementation are check lists for investigators and prosecutors, automated alert systems for management, and other tracking aids. It is expected that the ILES system will be fully implemented by the end of 2006.

Dec Response: The conversion from RAES to ILES was completed in October 2006.

Aug Response: Conversion is complete and additional enhancements are being pursued.

21. Closely monitor employees engaging in secondary employment by reviewing and approving requests on an annual basis.

Findings: The Department employs 18 medical investigators and 6 medical prosecutors. The Medical Investigations Unit maintains a very low turnover rate. More than half of the medical investigators have been in their positions for over 15 years. The Department has not hired a medical investigator in over 3 years. Medical investigators in Springfield are

**Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians**

based in the Springfield office. Medical investigators based in Chicago work from home but do come into the office on occasion. Each investigator is responsible for working in the office on their "duty days." The investigators on duty are available to answer questions and phone calls, and handle walk-ins. This is usually three to five days per investigator per month. Medical investigators do not submit timesheets, which makes it difficult for supervisors to account for investigators' time when they are not in the office.

The Department does not require secondary employment requests to be submitted for approval on an annual basis as outlined in the Enforcement Manual. Upon written approval, medical investigators and attorneys are allowed to engage in secondary employment not to exceed 20 hours per week. Therefore, loose controls in this area leads to potential for secondary employment activities to interfere with Department employees performance and time working as a State employee.

Response: The Department has developed an agency-wide policy for secondary employment. The agency-wide policy supersedes that of the Enforcement Manual, which is currently under review, and applies to all Department employees, not just those in Enforcement. The Department will revise its Enforcement Manual to correctly reflect the Department's agency-wide policy on secondary employment

Auditor Comment: No Departmental policies on secondary employment other than those included in the Enforcement Manual were provided to the auditors during the course of the audit.

22. Establish appropriate training programs for medical investigators as directed in the policies and procedures.

Findings: The Department has not established appropriate training programs as directed in its own Enforcement Manual. According to the Manual, "investigator training programs will be offered no less than two times per calendar year." Currently there is no training calendar for investigators. There are no formal training requirements for the types of training investigators must get.

Response: The Department has developed a series of training opportunities for its investigative staff and will continue to work with local, state and federal authorities to expand opportunities for its investigators to improve their skills. Plans are being developed to offer Department investigators recurring training opportunities including seminars by the Secretary of State on Identity Theft, training specifically related to the new ILES system, sexual harassment training, policy and personnel rules review, Sheriff's Association Law Enforcement Training Board and DEA training seminars. Controlled Substance Inspectors received armed weapons training which included two scheduled qualifications for the year. With the passage of the Ethics Reform bill employees were mandated to complete ethics training and successfully pass a computer based ethics test.

**Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians**

The Department, through its Training Coordinator, will continue to develop and arrange for training for the medical investigators.

Aug Response: The Department has organized training for all of its investigators. Training includes workshops with Department attorneys, Drug Enforcement Administration (DEA) drug diversion school and REID Institute interrogation training. The Department has also scheduled other internal training sessions.

23. Require employees to disclose potential conflicts of interest as required by the Enforcement Manual.

Findings: The Department is not enforcing its policy requiring conflicts of interest be disclosed by employees. The policy requires that staff members, Board members, or contractual employees recuse themselves from cases where they have a conflict and disclose that in a written statement which will be maintained as part of the permanent file for the case. The auditors' review of Complaint Committee minutes showed that members of the Committee do recuse themselves from cases, but Medical Disciplinary Board minutes we reviewed did not contain any such evidence. In our review of files, we found no evidence of written disclosures of conflicts of interest in any of the files we reviewed from the Bureau of Statewide Enforcement.

Response: The Department has a stringent agency wide policy with regards to conflicts of interest which applies to all employees as well as Board members. Though this policy differs slightly from the policy as written in the Enforcement Manual, it will supersede that of the Enforcement Manual. The Department will revise its Enforcement Manual to correctly reflect the Department's policy on conflict(s) of interest. The Department is developing future agency wide trainings to address current and any new policies and procedures related to conflict(s) of interest.

In addition to the Department's written policy, each employee and Board member is required to report any potential conflict(s) of interest on his or her Statement of Economic Interest. This form is completed, returned and filed with the Illinois Secretary of State's Office. In addition, under the Governor's Ethics Reform Legislation, each employee is required to complete and successfully pass a computer based ethics training course. Within the ethics training course, conflict(s) of interest are addressed again with directives to report any such conflict(s) of interest to the state agency's Ethics Officer.

Auditor Comment: No Departmental policies on conflict of interest other than those included in the Enforcement Manual were provided to the auditors during the course of the audit.

Aug Response: As of May 1, 2007, all Department employees and Board members were required to complete and submit their 2007 Statement of Economic Interests forms

**Program Audit
Department of Financial and Professional Regulation's
Disciplining of Physicians**

to the Office of the Secretary of State. As of May 23, 2007, all Department employees were required to complete the Mandatory 2007 Ethics Training.

24. Require employees, including medical investigators, to prepare timesheets as required by the State Officials and Employees Ethics Act. Timesheets should also help management to more closely monitor medical investigators' time.

Findings: Medical investigators do not prepare timesheets as required by the State Officials and Employees Ethics Act. As is noted earlier, Chicago medical investigators work from their homes and are not required to be in the office except for 3 to 5 assigned "duty days" each month.

Supervisors in Medical Investigations said they track the investigators using cell phones and leave request sheets. In addition, the supervisors can also get some sense of the amount of work performed through the investigative reports submitted by the investigators for review. According to caseload reports provided by the Department, investigators had caseloads of 11 to 45 in FY05.

Response: In January of this year, the Department implemented an additional timekeeping system for approximately 200 of its Merit Compensation Employees. This electronic system requires employees to input the time they spend on state business to the nearest quarter hour, and contains controls to ensure that submission of the timesheet each week results in the employees, in effect, certifying their timesheet. This Department policy was communicated via e-mails and training sessions.

The Department plans to begin negotiations with the union to expand this timekeeping system to all union employees, including investigators and attorneys, later this year. Once this is completed, a formal, written policy will be introduced. We will then revise the Enforcement Manual to reflect these changes.

Aug Response: As of July 2, 2007, ALL Department employees must enter work time into a software application entitled, "Ethics Timekeeping Work Diary". The purpose of the Ethics Timekeeping Work Diary is to meet the State Officials and Employees Ethics Act, Article 5, Section C, requirement when accounting for work time.