

Office of Professional Medical Conduct

Dispelling Physician Misconduct Reporting Myths

There are undoubtedly a great number of myths regarding physician and institution responsibility for reporting suspected instances of misconduct. This article is intended to make health care professionals aware of the realities.

Myth

Although it might be a good idea to turn in a physician suspected of misconduct, it is not required by law.

Reality

While any person may report, Public Health Law Section 230 (11) (a) **requires** physicians and other licensed health professionals, medical societies and officials of hospitals, nursing homes, licensed clinics and health maintenance organizations to report suspected cases of misconduct. The law says these individuals and organizations must report:

"...any information...which reasonably appears to show that a licensee is guilty of professional misconduct..."

Reports are required by law to be kept confidential and cannot be admitted into evidence in Office of Professional Medical Conduct (OPMC) proceedings, although they may be used to initiate investigations and to develop further information.

Myth

It is not really necessary to report misconduct because failure to do so is not defined as misconduct.

Reality

Failure to report suspected instances of misconduct constitutes misconduct under State Education Law Section 6530 (13).

Note: New York State Public Health Law Section 230 delineates the medical conduct process; New York State Education Law Section 6530 defines misconduct.

Myth

Physicians need not report substance-abusing colleagues or those suspected of suffering from mental illness to OPMC as long as they make a report to the Medical Society of the State of New York's (MSSNY) Committee for Physicians Health (CPH) which confronts and refers to treatment physicians impaired by alcohol, drugs or mental illness.

Reality

State Public Health Law Section 230 has no specific provision to exempt physicians from their duty to report to OPMC physicians practicing with a suspected impairment because they report to CPH. Physicians have a duty to report suspicions of substance abuse or mental illness as well as any other suspected misconduct.

However, if a physician or administrator of a hospital establishment pursuant to Article 28 of the State Public Health Law is **unable to determine** if his or her information reasonably appears to show that another physician is guilty of misconduct, a written request for advice may be made to OPMC. The name of the practitioner in question does not have to be revealed when such advice is requested. OPMC will advise whether there is an obligation to report. This provision applies to any action, not just possible impairment, that may be suspected of constituting misconduct. Physicians and administrators **must comply** with the advice received from OPMC. (Public Health Law Section 230 (11) (d) (I))

If a physician is **reasonably unable** to determine whether information he or she has may be evidence of misconduct, he or she may call or write to OPMC for guidance or do one of the following:

1. If the physician thought to have a problem is affiliated with a hospital established pursuant to Article 28 of the Public Health Law, a physician can fulfill his or her obligation to report by providing information to the appropriate executive committee of professional practices per review committee. The physician members of these hospital committees then have the responsibility to report to OPMC. (Public Health Law Section 230 (11) (d) (ii))
2. If the physician believed to have a problem is a member of a county medical society or district osteopathic society, practices within the jurisdiction of the society and is **not** affiliated with a hospital a physician can fulfill his or her obligation to report by providing information to the society's professional practices review committee. The physician member to the review committee then have the

responsibility to report to OPMC. (Public Health Law Section 230 (11) (d)(iii))

Myth

A physician who participates in a hospital's morality or morbidity conference, departmental meeting or a medial or tissue committee meetings is required to report information learned during such sessions.

Reality

Public Health Law Section 230 (11) (c) (i) specifically exempts members of such committees from being required to report findings from those sessions to OPMC. However, the chairpersons of such committees have the obligation to report when appropriate.

Myth

A Physician may be held liable for civil damages for reporting a colleague he or she thinks may be guilty of medical misconduct.

Reality

Public Health Law Section 230 (11) (b) states that any person who provides, or any organization, insurance company, osteopathic or medical society that provides information of suspected medical misconduct in good faith and without malice to the Board for Professional Medical Conduct shall not be subject to an action for civil damages or other relief.

Myth

The doctor/patient privilege does not prevent physicians from reporting colleagues they are treating.

Reality

To the contrary, physicians who are treating other physicians are specifically exempted from the requirement to report misconduct discovered during treatment of another physician. Public Health Law Section 230

(11) (e) provides that "nothing... shall be construed as to require any physician to violate a physician/patient privilege and therefore, no physician shall be required to report any information to the board which such physician has learned solely as a result of rendering treatment to another physician.

Myth

Hospitals must comply only with the terms of the National Practitioner Data bank to report to the medical board any suspension of a physician's privileges that is greater than 30 days. This regulation also requires hospitals to report when a physician resigns or surrenders privileges while under investigation.

Reality

Complying with the federal statute is only a part of a hospital's responsibility to report.

The state's Hospital Code requires hospitals to report to the OPMC within 30 days the denial, suspension, restriction, termination or curtailment of training, employment association of professional privileges or the denial of certification of completion of training of any physician due to the following:

- alleged mental or physical impairment, incompetence, malpractice, misconduct or endangerment of patient safety or welfare;
- voluntary or involuntary resignation or withdrawal of association or of privileges with the hospital to avoid disciplinary action;
- information concerning a conviction of a misdemeanor or felony.

Further, Public Health Law Section 230 (11) requires all hospitals, nursing homes and health maintenance organizations to report suspected instances of misconduct to the Board for Professional Medical Conduct.

New York's medical conduct system is designed to protect the public while also providing a timely and fair disposition of complaints against physicians. The system only works when all participants--the public, the medical community and the investigators and adjudicators--fulfill their obligations to report, review and act appropriately.

It may be uncomfortable or even difficult to report a friend or colleague. However, the protection such an action provides both to the public and the profession, coupled with the legal requirements to report, should make the task an unquestioned reflex. Ultimately, patients and the medical profession will benefit.