



# **Rhode Island House of Representatives**

Special Commission to  
Study the Rules and Regulations  
of the Board of Medical  
Licensure and Discipline

Final Report  
April 2, 2016

**Report Submitted to the  
Rhode Island House of Representatives**

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## **Commission Membership**

**Representative Michael Chippendale (R)**  
District 40, Foster, Gloucester, Coventry  
Chairman

**Representative Gregg M. Amore (D)**  
District 65, East Providence  
Vice Chairman

**Representative Patricia Morgan (R)**  
District 26, Warwick, West Warwick, Coventry

**Representative Samuel Azzinaro (D)**  
District 37, Westerly

**Representative Thomas Winfield (D)**  
District 53, Gloucester, Smithfield

**Patricia Recupero, M.D.**  
Public Member

**Debbie McInteer, M.D**  
Public Member

**Elisabeth Galligan**  
Public Member

**Dean Lees**  
Public Member

## Letter from the Chairman

### *The Special Legislative Commission to Review the Rules and Regulations of the Rhode Island Medical Board of Licensure and Discipline*

I am pleased to submit this report of the commission's findings to the House of Representatives. I would like to sincerely thank every member of the commission for their hard work and dedication; Dr. Debbie McInteer, M.D., Dr. Patricia Recupero, M.D., Ms. Elisabeth Galligan, Mr. Dean Lees, Representative Gregg Amore, Representative Patricia Morgan, Representative Thomas Winfield and Representative Samuel Azzinaro. I would like to especially thank Jeffrey Robert of the House Minority Office for Clerking this commission as well as his tireless efforts in the research, interpretation, and overall compilation of the extremely high volume and complexity of both printed and digital information that the commission received throughout its efforts.

The BMLD Commission under the House Oversight Committee purview strives to enhance the efficacy of state government agencies, while maintaining the separate identities of the Legislative and Executive Branches of government. Highly regulated fields, such as the practice of medicine, generally exhibit some degree of tension between the regulated professionals and the policing authority. This healthy tension illustrates the check and balance of the system for the protection of the people.

Throughout the six months of the commission's investigation, we received and compiled a great deal of information from the Department of Health, the BMLD, the RI Medical Society, and from medical practitioners across the state. The commission established a clear understanding of the rules and regulations, processes, and procedures used by the BMLD in the execution of their duties and determined areas of weakness and strength. This report will outline the findings and the recommendations of the Special Legislative Commission to Review the Rules and Regulations of the Rhode Island Medical Board of Licensure and Discipline.

With the coordinated efforts of the Department of Health, it is my sincerest hope that this document will result in a BMLD that is more effective in its primary function, while equitable and judicious in the execution of its duties and responsibilities. I am further hopeful that one of the major outcomes of this report and its findings will be a new and higher level of transparency and understanding between the medical profession and the BMLD.

This report is respectfully submitted,



Chairman Michael W. Chippendale  
*Senior Deputy Minority Leader*

# Commission Report

## Introduction:

The 2015 Session of the Rhode Island House of Representatives enacted House Resolution 5500 Substitute A on March 25, 2015. This resolution created a special legislative House study commission to undertake comprehensive study and analysis of the rules and regulations pertaining to the Rhode Island Board of Medical Licensure & Discipline, which will be referenced in the course of this report as the BMLD. In addition, the study commission was tasked to assess the fairness of the application of the rules and regulations regarding the discipline of any medical professional.

This special legislative House commission was borne out of an initial letter of inquiry made on behalf of House member Representative Chippendale to the Department of Health on October 14, 2014. In response to the informational request, the Department provided document binders totaling nearly a thousand pages. Due to the voluminous amount of data and the nature of the inquiry, the House of Representatives developed legislation to formally study and review the Board of Medical Licensure and Discipline.

The commission appreciates the hard work of its members and their diligence with the volume of the materials provided. The BMLD commission assembled for six meetings from October 2015 to March of 2016. During this time, the commission heard from various stakeholders and community members. The Director of the Department of Health and a member of the BMLD presented to the commission in November. Senior Counsel to the BMLD and the Chief for the Center for Professional Boards and Commissions with the Department of Health testified before the commission in December. In January, the commission received testimony from both the Legislative Director and the Executive Director of the Rhode Island Medical Society. Members of the public were provided the opportunity to speak in the commission's February meeting. The commission would like to thank all of those who participated in these meetings.

After each commission hearing, commission members developed questions for the Department of Health. The Department's timely response contributed to the success of the commission and enhanced its findings.

## History:

The rules and regulations outlining the requirements of medical licensure and physician discipline precede the creation of the BMLD. The rules and regulations were first adopted in 1967, while the BMLD was legislatively enacted in 1983. The rules and regulations of the 'Licensure and Discipline of Physicians,' R5-37-MD/DO, have been amended thirty-one times with the most recent revision finalized October 2015. These documents in addition to other rules and statutes provide the framework which guides the BMLD.

The Governor of Rhode Island appoints the thirteen members of the Board. The chairperson of the BMLD and thirteenth member is the Director of the Department of Health. Statutory provisions outline the required Board composition. Four members must be licensed physicians who possess the degree of doctor of allopathic medicine; one of whom must be a full-time medical school faculty member. Two members of the Board must be licensed physicians who

hold the degree of doctor of osteopathic medicine. Five public members are selected as follows: one attorney with experience as plaintiff's counsel in medical malpractice, one member of the general public not associated with the medical field but is sixty years of age or older, and three members of the public not associated with the medical field. Lastly, one hospital administrator must be appointed to the Board. ( RIGL 5-37-1.1)

Members from the Board are selected by the Director of the Department of Health and separated into two Investigative Committees both of which are comprised of four members. The Board of Medical License and Discipline ensures that each Investigative Committee has one member with the same medical degree as the investigated physician. Under statute, a majority of members must vote and ratify measures to be effective.

The Board of Medical Licensure and Discipline has the statutory duties and powers to: adopt, amend, and rescind rules and regulations, investigate all complaints and charges of unprofessional conduct, issue subpoenas, take or cause depositions, summon and examine witnesses and direct the director of the department of health to license qualified applicants, revoke or suspend licenses. The BMLD has the authority to promulgate regulations for allopathic and osteopathic licensing. (RIGL 5-37-2) Also, the BMLD has the authority to deny medical licenses. (RIGL 5-37-4)

The main function of the BMLD centers upon the act of regulating licenses and ensuring physicians abide by those regulations enforced by the Board. Failure to abide by all regulations and statutes may lead to the rescission of the medical license with the determination of unprofessional conduct. Statute specifically governs unprofessional conduct. (RIGL 5-37-5.1)

Determination of unprofessional conduct and the process therein was a focus of the commission's efforts. The process whereby the BMLD determines unprofessional conduct will be further explained in the subsequent section.

### **Board of Medical Licensure and Discipline Complaint Process:**

Due in part to its complexity, the complaint process can be difficult to follow; provided in this report is an appendix illustration of the complaint process. Please view Appendix—Attachment 1 for a flow chart of the following process.

Initially, a complaint is filed with the Department of Health. Complaints may be filed through mail, phone, fax, or web-based means. Additionally, the BMLD staff has the authority to file complaints on their own. These internal complaints may originate from media sources, other investigations, or other Departmental information. Once a complaint has been logged, a Department of Health staff member prepares a file. The complaint must identify at least one licensed healthcare professional by name in the complaint. Otherwise, no action will be taken until a licensed professional is identified. Once identified, the case will be sent to the appropriate board staff for the next step in the process.

BMLD staff generates a document titled "Complaint Cover Sheet," which is attached to the supplemental portion of this report. See Appendix—Attachment 2. A complaint number is assigned to the case. An acknowledgement letter is created and sent to the complainant.

All cases come before a triage group, called "Team Review" by the BMLD. Team Review is a Department policy that was implemented in 2012. The policy created weekly 'new-complaint' meetings during which assigned cases would be analyzed. Complaints that meet any of the following criteria are generally opened and investigated: Intention acts such as boundary violations, diversions, felonies; unprofessional conduct as defined in state statute; patient safety issues; and any complaint that any one member of the triage team determines should be investigated. Team Review is comprised of the Chief Administrative Officer of the BMLD, Legal Counsel to the BMLD, and a Board Investigator. These three individuals vote on the merits of the complaint. If any one member of the Team Review group feels a complaint should be opened and investigated, then it is opened and investigated. See Appendix—Attachment 3.

During the Team Review, members have the power to request more information, subpoena records, review witness statements, and conduct inspection or investigation. After an initial investigation, Team Review members compile documents and create a summary file for the assigned case. As the case moves to the next phase, these documents are transferred via an encrypted USB detachable "thumb" drive.

Team Review members have three outcomes. If the complaint fails to state a claim that would amount to unprofessional conduct pursuant to 5-37-5.1, the complaint will either be closed or vacated. If the complaint states sufficient facts which would amount to unprofessional conduct, were all the facts later substantiated, then the complaint remains open and proceeds to the next phase, the Investigative Committee. Notice is sent to the physician of the open complaint and their right to respond to the Board about the complaint. Additionally, the physician has the right to counsel and have their case discussed in a public session. Physicians are provided 45 days to respond to a complaint and are offered a continuance if good cause is offered. The last option available to the Team Review members is a vote of immediate jeopardy to the public health and safety. The case is brought immediately to the attention of the Director of the Department of Health.

Rhode Island statute governs the powers of the Director during times of "emergency." Under RIGL 5-37-8, the Director may temporarily suspend the license of a physician without a hearing. Yet, a hearing by the board must be held within ten days after the suspension has occurred.

A complaint that remains open but is not an immediate threat to the public is transitioned to an Investigative Committee. There are two Investigative Committees within the BMLD Board. Each committee is comprised of four members and is subject to Rhode Island Open Meetings Laws 42-46-1. Members will review each case and discuss in closed session the contents of the Team Review file. The Investigative Committee members may do the following: ask for more information, request the physician or other witnesses appear at a later date, vacate a complaint that should not have been opened, administratively close a malpractice complaint subject to civil litigation, table a matter not ripe for vote, vote a finding of no unprofessional conduct or vote unprofessional conduct.

The Investigative Committee has the option to vote no unprofessional conduct, NUPC. If voted no unprofessional conduct, the case must go to the full BMLD board, which must agree with the Committee's decision. The complaint is closed if the BMLD Board agrees; however, if the Board

does not agree with the NUPC ruling, the complaint is remanded back to the Investigative Committee for further evaluation.

If the Investigative Committee votes unprofessional conduct, UPC, notice of preliminary findings, as well as, notice for an informal meeting are sent to the physician. A finding of unprofessional conduct will be accompanied by a consent order and must go before the full BMLD board for hearing. The consent order is a recommendation listing sanctions, fees, probation, suspension, continuing medical education, evaluation, professional monitoring, or other restrictions of practice. The physician has 20 days to respond to these notices.

Upon contact with the physician, BMLD staff hold an informal meeting to explain to the physician the Investigative Committee's findings, the reasons for those determinations, the associated remedies, and the proposed sanctions. Departmental representatives in this meeting are the BMLD Chief Administrative Officer and BMLD Board counsel.

At this meeting, the physician has the option to sign and agree to the consent order. This agreement must be accepted by the full BMLD Board to be considered valid. However, the physician and full BMLD Board may reject a consent order, which necessitates a formal administrative hearing by the full BMLD Board.

During the proceedings of the full BMLD Board, the physician has the right to produce witnesses and evidence, to cross examine, to have subpoenas, and to have a public session. A stenographic record will be maintained for this hearing. Board Counsel presents evidence supporting the specification of charges against the physician. A formal decree with a written report of findings of fact and conclusions of law follows the formal hearing. Physicians have the right to appeal to the Superior Court within thirty days of the formal BMLD Board hearing.

### **Consent Orders:**

Upon determination of UPC, the physician may agree and sign a consent order. Sanctions vary depending on the complaint. Respondents must admit to the jurisdiction of the board, and may be required to accept a 'reprimand' on his/her license based on violation of specific laws. The physician waives the future right to the following: to appear before the Board, to produce witnesses on physician's behalf, to cross examine, to object to the fact of the consent order, and to any rights of appeal.

In some cases, physicians must engage third party monitors, which shall verify proper patient interaction and medical records. Other compliance, monitoring and assessments could be conducted by the Physicians Health Program associated with the Rhode Island Medical Society. Additionally, the Santé Center for Healing of Texas, Acumen Institute of Kansas, and Affiliated Monitors of Massachusetts were listed by the BMLD as available resources to the BMLD regarding licensing, discipline, and monitoring.

Consent orders may require the physician to complete a number of Board-approved continuing medical education hours and submit that evidence of completion to the Board. The requisite education correlates to the complaint. Physicians may be required to complete education hours in prescription regulation, personal addiction, and disease diagnosis. The Board of

Medical Licensure and Discipline provided examples of Board approved continuing medical education courses.

- Vanderbilt Center for Professional Health – Continuing Medical Education Courses for Physicians
- University of Florida: Prescribing Controlled Drugs
- Case Western University Intensive Course Review Series
- PBI Prescribing Course: Opioids, Pain Management and Addiction
- Center for Personalized Education for Physicians: Ethics & Boundaries, Medical Record Keeping, and Improving Inter-Professional Communication Courses

According to statute, physicians may be responsible to pay administrative fees to the Board for costs associated with investigating the complaint. The statutory limit to these fees is \$10,000. There is a fee schedule based on approximate costs for a case where unprofessional conduct is found. The last three years of the data illustrate a major statistical deviation from the previous ten year fee collection trend. Please view Appendix—Attachment 4 for an illustration of BMLD fees levied.

- \$50 information technology and phone
- \$25 office supplies
- Copying charges: .25 cents per page up to the first 100, then .15 cents thereafter
- Expert witness fees (actual cost)
- Hearing transcripts (actual costs)

BMLD staff labor is calculated separately, which is based on a per hour schedule. According to the documents provided by the BMLD, all billing information is recorded with internal accounting documents for ease of totaling. Hourly staff labor is charged in fifteen minute increments for time spent directly on an individual case. Staff is expected to update each case in real time and reflect an honest assessment of their time involved in any individual case.

#### Labor Cost Per Hour by Title

- Administrative Staff--\$39.16
- Investigator --\$59.81
- Board of Pharmacy Investigator--\$59.56
- Legal Counsel to BMLD--\$66.69
- Chief Administrative Officer--\$128.60

All consent orders are subject to the final approval of the Board and are not binding on the physician until final ratification by the Board.

## **Commission Concerns:**

During the course of the commission's investigation, members developed concerns in a number of specific areas. These concerns represent both statutory weakness and lack of regulation.

## **BMLD Process and Expectations:**

One overarching theme found within most, if not all, physician communication with the commission centered upon the unknown outcomes and future events of the BMLD. Physicians voiced their frustration over the lack of information provided by the Board or its various committees at each step of the process. This lack of information heightens physician stress and contributes to the negative opinion physicians expressed to the Board's actions.

This commission recommends the BMLD create a brief one page illustration of the process and expectations physicians can reasonably anticipate. This informational sheet should be provided to all physicians upon the notification of a valid complaint. Inclusive in this sheet will be a description of all stages of the BMLD complaint process with a reasonable timeline for the expected completion of each stage. Moreover, the information sheet will provide the rights and entitlements of the physician.

## **Opening a Complaint:**

It is in the public interest and safety to promote an uncomplicated complaint process to alert the medical board of licensure of potentially harmful actions. However, this process must be balanced to selectively diminish frivolous or unnecessary complaints. Please view Appendix 5 for an illustration of the Rhode Island BMLD online complaint form. To obtain this online webpage, a patient, family member, or any individual only must search for the physician's name on the BMLD website hosted by the Department of Health. There is a link adjacent to the physician's license number titled, 'submit complaint.' The single page attachment is the only information required to open a complaint against a physician in the state.

Other states have more comprehensive forms. Florida's complaint process requires a signed and written report. All signatures must be witnessed or notarized. Florida's department may investigate an anonymous complaint if the complaint is in writing and is legally sufficient. In addition to the directions, the Florida form clearly states issues which are not within the authority of the department. Those issues are listed as follows:

- Fee disputes—broken or missed appointments
- Billing disputes—the amount a physician charges for services
- Personality conflicts
- Bedside manner or rudeness of practitioners—physician attitude or professionalism

During the course of the commission's research, BMLD staff spoke to the rising volume of complaints since the implementation of expanded health insurance. Some of these additional complaints were billing disputes and outside the purview of Rhode Island's Medical Board. Written notification of inappropriate complaints may, in fact, reduce the workload of the Board and the total number complaints received.

Another issue discovered by the commission through the testimony of a physician centered upon use of the BMLD for personal gain. One physician recounted an experience where a patient filed a complaint with the Board. After the complaint was filed, the patient contacted the physician and suggested the complaint could be dropped if payments were made to the individual. This should not be tolerated in the state. The BMLD complaint process is necessary to protect Rhode Islanders.

Florida's complaint form states the following in bold text directly above the signature line, "Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree." Rhode Island's online form has a disclaimer yet no repercussions are listed for misstatements of truth. To deter physician exploitation, the Rhode Island form should be amended to include that misstatements of complaints shall constitute perjury according to RIGL 11-33-1, which may be punishable by imprisonment not to exceed twenty years. This statement may deter the unscrupulous from false claims and reduce the number of complaints.

As a result of Rhode Island easy complaint submission process, the BMLD must provide strong policies and procedures to judge meritorious complaints. This commission looks to the Director of the Department of Health to promulgate these rules to ensure spurious and unworthy complaints are not impacting the medical practice of a physician or squandering resources from the Board of Medical Licensure and Discipline.

### **Complaint Duration:**

According to testimony, the BMLD has reduced its caseload backlog and has decreased the period of time physicians must await decisions. While those changes are laudable, case duration remains an issue. The Department provided statistics for average case duration by outcome. Referring to the graphic in the Appendix—Attachment 6, the average duration in days of unprofessional conduct cases from 2011 to 2014 was in excess of 250 days. Case duration for no unprofessional conduct in that same period of time amounted to 239 days, Appendix—Attachment 7.

During the investigative process of the BMLD, some physicians may not be allowed to practice medicine. Some voluntarily relinquish their license to practice in hopes that doings so will look favorably to the Board and the complaint will be resolved quickly. Cases that extend for months represent a significant burden on the physician and their patients, especially when cases are deemed without merit and conclude with NUPC findings.

Patients battling chronic diseases or psychological trauma generally remain under the care of physicians for an extended period of time; thereby, establishing relationships. These positive relationships contribute to patient treatment and are imperative to successful treatment. The commission has heard of cases where patients are harmed by the diminished level of care when investigated physicians refrain from practicing out of an abundance of caution. These physicians and their patients may be forced to wait months without resolution.

As of December 1, 2015, the BMLD had 92 pending unresolved cases. Greater than one-third of these cases exceed six months in duration, Appendix—Attachment 8. The commission finds this delay to be burdensome to physicians and detrimental to patient health. Therefore, the commission recommends a statutory requirement mandating the BMLD communicate with physicians within a specified timeframe and conclude the complaint proceedings within a reasonable period of time.

In correspondence with the BMLD, the Board recommended adding two more seats for Allopathic Physicians to the board. Designating one new member as a pain management or addiction specialist would provide depth to the board and may reduce the current backlog of pending cases. This statutory change may decrease the duration of outstanding cases; thereby, reducing the detrimental impact placed upon physicians and patients.

### **License Removal:**

The main purpose of the Board is to police medical professionals and to ensure the public is fully protected. Licensing requirements, which the BMLD regulates and controls, safeguard the public. Those not suitable for employment as a medical professional are denied a license. Moreover, those who represent a danger to the public or those who fail to abide by all rules and regulations may lose their license through the BMLD complaint process illustrated above. Since the process to become credentialed to pass the licensing requirements is extensive, requiring both years of advanced education and thousands of dollars, the threat of license removal is strong.

If a license is revoked, the physician cannot practice medicine in the state. Additionally, all other states in the nation necessitate disclosing revoked licenses for new applications of a medical license. Thus, if a physician loses the license to practice medicine in one state, he/she would, most likely, lose the ability to practice in any state. According to the Rules and Regulations for Licensure and Discipline of Physicians R5-37-MD/DO, the physician is not eligible for reinstatement of medical license for five years.

The commission heard testimony from two doctors and received a signed affidavit with written testimony regarding another physician's case that indicated the power this license removal exemplifies. Some physicians will go to great lengths to ensure his/her license is not revoked. Some voluntarily halt the practice of medicine, while others have felt compelled to agree to any consent decree promulgated by the BMLD. As this leverage against a physician's licensing status impacts the complaint review process, the commission recommends departmental regulations are written to prohibit the threat of license removal from BMLD negotiations with physicians.

### **BMLD Staff Participation:**

The Department of Health provided documents which outline the complaint process as it moves through the BMLD. From those documents, the commission tracked staff participation as it relates to disseminated information. For every complaint, the same three BMLD staff members review each initial complaint. Any one of these staff members may determine a case should be opened. Once a complaint has been opened, these same staff members conduct preliminary investigations and develop reports to be later used by the Investigative Committee. Thus, a member, who believed and decided a physician warranted further investigation, creates a report to be later used by the Investigative Committee. This connection inherently taints the process; since, the report presented to the Investigative Committee is based on drafters' opinions who first voted to initiate the process of unprofessional conduct.

Furthermore, members of the BMLD staff are present for both Investigative Committees and full BMLD Board hearings. Staff members may be asked to present their opinions and provide additional advice. Again, an individual who may have voted to investigate a particular physician has another opportunity to influence the decision making body.

Due to the ramifications of a guilty verdict, the BMLD complaint process must provide strict procedures to isolate staff opinion and evaluate cases objectively on merit. As such, the commission recommends changing staff involvement with the Investigative Committee and the full BMLD hearings. Staff who have researched cases and presented opinions should not be called upon to make suggestions or provide advice during Board proceedings or IC hearings.

### **Remanded Cases:**

If the Investigative Committee determines through majority vote that a physician is not engaging in unprofessional conduct, the case goes before the full BLMD for an additional vote. At this time, the full Board has the option to remand the case back to the Investigative Committee or accept the finding of NUPC, which denotes the case will be immediately vacated. In these remanded cases, the very same Investigative Board members are asked to reevaluate physician cases after making determinations of no unprofessional conduct.

Unless new information was discovered, the Board implies a belief of guilt upon the physician when disagreeing with the Investigative Committee's NUPC finding. Initially, the physician was found innocent, NUPC, by the Investigative Committee, but the full Board thought otherwise. At this stage, the IC must make another determination regarding the physician in the case, which will go before the same members of the full BMLD.

While the Investigative Committee hearing is not a judicial hearing, remanded cases seem to parallel the procedural defense of double jeopardy, where the defendant is tried a second time on the same charges in the same case following a verdict of NUPC by the majority of Investigative Committee members.

From 2013 to 2015, the full BMLD remanded 13 cases to the Investigative Committee for further review by the IC. Of those 13 remanded cases, 2 were changed from NUPC to UPC.

The commission recommends the Director of the Department of Health promulgate new procedures after an Investigative Committee determines NUPC. These new procedures must ensure physicians are afforded impartial panels who have not previously made judgement upon his/her case.

### **Informal Meetings:**

During the investigative process of a complaint, an informal meeting may be held with the physician. This informal meeting would be attended by the BMLD Chief Administrative Officer and the Board Counsel. Commission testimony indicated this informal meeting was not recorded because the conversation should resemble a 'free flow' of information between all parties. In testimony, BMLD staff surmised that recorded information could be discoverable during a malpractice case, thereby altering the dialogue. This informal meeting serves to resolve the complaint by mutually agreeing to a consent order. Failure to agree to the consent order initiates a formal administrative hearing by the full Board.

Documents obtained by the Commission indicated that information revealed during the course of the informal meeting could, in fact, be used during the course of the formal proceedings. This finding represents a concern of the Commission, as the informal meeting is not recorded. Without records, the information obtained in this informal meeting should not be used as evidence in a formal administrative hearing. Minimally, physicians should be notified his/her comments may be used in subsequent hearings as evidence and afforded the right to request that the meeting be recorded.

### **Physician Health Program:**

The Physicians Health Program or Physicians Health Committee is a peer review body founded in 1978 to serve the professional communities of physicians, dentists, podiatrists, and physician assistants in Rhode Island. This program is managed by the Rhode Island Medical Society, RIMS. According to the RIMS website, the PHC offers confidential and effective help for troubled physicians. The Committee has helped medical professionals address personal problems that can compromise professional performance.

The website and RIMS representatives in the January commission hearing testified that correspondence and interactions between physicians and the PHC are confidential. However, Dr. Nissensohn testified in the February commission hearing that individuals within the BMLD were made aware of information only available to PHC members. Clearly, this physician found a serious breach of his confidentiality.

### **Evaluation Request and Mandate:**

As a result of a consent decree, physicians may be required to participate in the Physicians Health Program for a period of five years. The sanctioned physician is required per the consent order to be evaluated. Physicians are provided a list of doctors who are deemed appropriate to evaluate the cited physician. Regardless of the evaluation's outcome, the cited physician will be required to participate in the program for the full duration of five years. During this time, the physician will be required to pay the costs associated with the counseling.

One doctor recounted his experience with the evaluation process. The BMLD encouraged the physician to undergo an evaluation. He did so, at his own expense. The results of the analysis were favorable to the physician. The BMLD found fault with the undertaken evaluation and requested another evaluation be conducted by a forensic psychologist. This evaluation required the physician to travel outside of the region at personal expense. With favorable results of this analysis for the physician, a third evaluation was requested. Upon this request, the physician was furnished with a list of medical doctors to select. Conclusion of this third assessment paralleled the first two evaluations. Combined, the personal cost of these evaluations totaled in excess of \$30,000, the results of which were conclusively similar.

This commission finds fault with the evaluation process. The duration of treatment mandated through a consent order should be tied to the evaluation's initial report. Requiring a mandatory five year program amounts to a sentence devoid of personal specificity; treatment should better reflect the needs of the physician as illustrated through the findings in the initial evaluation.

Furthermore, this commission requests that physicians are provided options for personal treatment within the surrounding region. In addition, the physician should not be required to undergo multiple costly evaluations at discretion prior to any judgement by the Board. Physicians should be afforded the freedom to select their own doctor for continuing treatment.

### **Investigative Committee Participation:**

Through the course of the commission's investigation, some physicians expressed they were never afforded the opportunity to speak in their defense to the Investigative Committee before receiving a judgement. This commission finds that physicians must be afforded the opportunity to appear for self-defense or personally submit a letter expressly waiving their right of defense.

Furthermore, a medical professional holding similar medical credentials should be present for the Investigative Committee proceedings. The commission was made aware of cases where physicians were not adequately represented by a medical professional of their field during an Investigative Committee hearing. According to state 5-37-5.2 (b), the Investigative Committee must have one member of osteopathic medicine, if the complaint relates to osteopathic manipulative treatment. Yet, if the matter relates to allopathic medicine, there is no statutory requirement mandating a member of that specialty be present for the Investigative Committee.

Moreover, through basic absentia, the medical professional may not attend the Investigative Committee hearing. Quorum rules allow one member in four to be absent. Thus, a vote of UPC remains valid when the only Investigative Committee member with specific knowledge of the medical specialty is absent and all else are present.

This commission requests that all Investigative Committee votes are held until the participation of the specialty medical professional can be assured. Doing so will enhance proper representation on behalf of the physician. Additionally, the commission requests that statute be amended to reflect the mandatory designation of an allopathic physician to the Investigative Committee when a physician of that specialty is under review.

### **Subpoena Power:**

Rhode Island General Law 5-37-6 authorizes the BMLD to have subpoena powers. The structure of the law denotes that this power can be used by the 'board or the board's constituted committees to compel the production of documents . . . or the attendance of witnesses at any investigation or hearing." As such, the Team Review Committee has the power to issue subpoenas prior to the appointed member Investigative Committee hearing.

Documents provided by the BMLD maintained that record production as a result of the issuance of a subpoena varies depending on the severity of the case. An immediate jeopardy case may require the records within twenty-four hours, while other cases may allow for a thirty day window. The commission asked the Department to provide training documents and criteria for the issuance of subpoenas. The BMLD responded, "Subpoenas are issued after consultation with legal counsel." Yet, no additional information on staff training or subpoena requirements was noted.

It has come to the commission's attention that there is no approval process within the BMLD or DOH for the issuance of a subpoena. This question was asked by the commission. The Department responded, "Subpoenas are issued in accordance with RIGL 5-37-6 after review by legal." The cited law does not contain provisions or language for an approval process.

This commission recommends that all subpoenas issued pursuant to section 5-37 be issued only by a vote of either the Investigating Committee or full Board. Additionally, subpoenas must have a reasonable return date that will allow the recipient an opportunity to review the subpoena, consult with counsel, and prepare a response to the subpoena.

### **Prescription Drug Monitoring Program:**

There is a growing opioid problem in the United States. It is important to track drug dissemination to curtail abuse and provide care for those requiring it. The PDMP provides information on all prescription drugs issued to individuals within the state and by the prescribing physician. As this data contains information from both patients and physicians, there are opportunities for Health Insurance Portability and Accountability Act, HIPAA, violations if the proper procedures are not in force. Reporting physician medication without cause is a privacy violation and may influence future proceedings of the investigation and Board. As a complaint arises, a physician's own medications should remain private unless there is an indication of substance abuse in the complaint or is discovered during the routine course of an investigation.

## **Pre-Hearing Requirements**

The commission has been made aware of cases where physicians were encouraged to undergo remedial education prior to any agreed upon consent order or decision by the full Board. These physicians were persuaded that remedial education would look favorable to the Board and the impression of leniency was made. The commission has already tracked the amount of leverage the medical licensing board maintains over physicians. Any assurance to diminish the threat made upon a physician's medical license will be looked upon favorably by the physician. Physicians should be treated with the same level of presumed innocence extended to those within the court system.

This commission recommends that physicians not be required to engage in any remedial education, forensic or psychiatric evaluation, or be forced to pay any expense outside of personal legal representation prior to the full BMLD determination or the mutual acceptance of a consent order. Physicians may not be required or encouraged to undergo non-mandatory education training or mental health evaluations without a vote of UPC by a majority of the full Board. This provision would protect the physician rights and uphold the integrity of the BMLD.

## **Miscellaneous Issues:**

The Florida complaint form poses a good question, "What would satisfy your complaint?" The answer to this question could help BMLD members determine the expectations of the injured party. The answer to which may be monetary compensation for damages or simply a change in the physician's office policy. If the complaint is resolved quickly and the injured are satisfied, the process is strengthened. The additional of this question comes without cost on the digital form and could increase the efficiency of the complaint process.

Currently, complaints remain on file regardless of the Investigative Committee or Board determination. Complaints without merit and a determination of NUPC should be vacated by the BMLD and removed from the physician's record completely.

Significant regulations and labor rules are involved in the state employee hiring process. However, it is important to correlate occupational requirements to the inherent skills of the employee. As the BMLD staff maintains serious influence with medical professional licensing and complaint matters, it is important to align staff skills with function. Individuals possessing experience with investigations will have stronger conceptual understanding of the procedural investigatory process within the BMLD. The hiring of such individuals should take precedence.

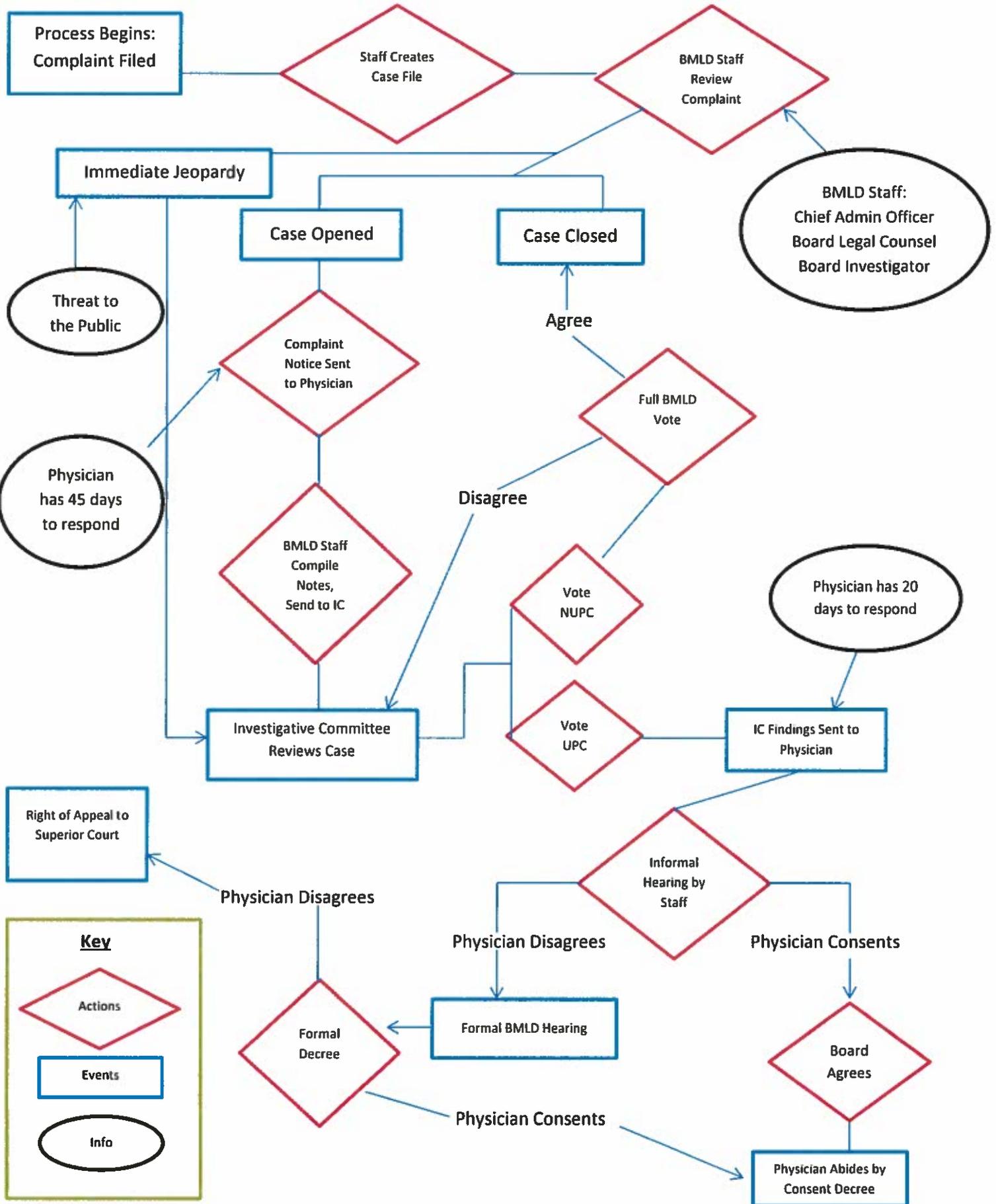
Provided in the Appendix—Attachment 9 is a table of the number of complaints received with the respective future actions by the Board.

## **Commission Recommendation Summary:**

The commission recommends the following:

- The BMLD create a brief one page illustration of the process and expectation physicians can reasonably anticipate and be provided with this sheet upon initial notification of a complaint.
- Modify regulation to prohibit remedial education or evaluation prior to an IC or full Board vote
- Amend the forms for opening an complaint to:
  - Illustrate those complaints outside of the jurisdiction of the BMLD
  - Include deterrent language for the submission of false information
  - Promulgate rules that would reduce spurious and unworthy complaints
- A statutory requirement mandating the BMLD communicate with physicians within a specified timeframe and conclude the complaint proceedings within a reasonable period of time
- Increase the number of members serving on the Board of Medical Licensure and Discipline
  - Add two members to the Board
  - Designating one new member as a pain management or addiction specialist physician
- Creation of Departmental regulations to prohibit the use of license removal from BMLD negotiations with physicians
- Director promulgate new procedures to mitigate the impact of staff opinion upon Investigative Committee and full BMLD hearings
- Redaction of possibly identifying physician information from the initial Team Review hearing to provide a level of objectivity for the physician
- Director to promulgate new procedures for NUPC review; avoid the issue that the same committee member review remanded cases
- Prohibit the further use of information from any informal contact with a physician. If this information is not prohibited, physicians must be made aware of the possibility of future use
- Through new departmental policy promulgated by the Director, ensure full confidentiality is maintained between the PHC and the BMLD.
- Provide local treatment and evaluation options for physicians
- Promulgate rules to mandate that physicians be afforded the opportunity to appear for self-defense or personally submit a letter expressly waiving their right of defense for both Investigative Committee or full BMLD hearings
- Prohibit Investigative Committee voting until the participation of the specialty medical professional can be fully assured
- Amend statute to reflect the mandatory designation of an allopathic physician to the IC when a physician of that specialty is under review
- Amend statute to limit the issuance of subpoenas to only a majority vote of the IC or full Board
- Promulgate regulation to provide physician privacy regarding personal medications unless there is an indication of substance abuse in the complaint or is discovered during the investigation
- Promulgate rules within the BMLD to mitigate the interruption of patient care and treatment during physician investigations

# Attachment 1: BMLD Flow Chart



## Attachment 2: Complaint Cover Sheet

### COMPLAINT COVER SHEET

<b>DATE RECEIVED:</b>	<b>COMPLAINT ID #</b>
	<b>ACTS ID #</b>

<b>SOURCE:</b>
----------------

LICENSEE INFORMATION		
<b>LICENSE NUMBER</b>		
<b>LAST NAME</b>	<b>FIRST NAME</b>	<b>MIDDLE NAME</b>
<b>ISSUE DATE</b>	<b>EXPIRATION DATE</b>	<b>LICENSE STATUS</b>

<b>Other Dept. Involved:</b>
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<b>COMPLAINT</b>
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### TO BE FILLED OUT BY BOARD/DIVISION STAFF

<b>TEAM REVIEW:</b>	<b>Present at Team Review</b>	
<b>Date Reviewed</b>		
<b>Open</b>		
<b>Administratively Closed</b>		
<b>Obtain Additional Data</b>		

## **Attachment 3: Team Review**

### **Board of Medical Licensure and Discipline**

#### **Opening a complaint**

##### **Introduction:**

BMLD receives complaints from several entities; patients, facilities, other boards, pharmacies, other professionals and more. The process of opening a complaint is a team based activity. The BMLD recognizes that not every complaint filed falls under its jurisdiction or is of substantial merit to justify opening a complaint.

Opening a complaint is delegated from the full board to the staff. Each complaint received is triaged to determine if the complaint should be opened and investigated.

##### **Process:**

Complaints are received by the complaint unit and sent to the BMLD for triage. The Chief administrative officer, investigator and board attorney review every complaint and triage those for opening and investigation.

Complaints that meet any of the following criteria are generally opened and investigated.

- Intentional Acts (Boundary violations, diversion, felonies etc...)
- Unprofessional conduct (UPC) as defined in our statute
- Patient safety issues
- Any complaint that any one member of the triage teams determines should be investigated

If any one member of the triage team feels a complaint should be opened and investigated, then it is opened and investigated.

## Attachment 4: BMLD Fee Collection

BMLD Collections	
Year	Fees Collected
2003	\$ 1,500
2004	\$ 4,750
2005	\$ 3,000
2006	\$ 3,000
2007	\$ 12,750
2008	\$ 3,000
2009	\$ 2,500
2010	\$ 2,000
2011	\$ 2,500
2012	\$ 2,000
2013	\$ 29,786
2014	\$ 16,636
2015	\$ 33,829

## Attachment 5: BMLD Online Complaint Form

### Complainant Information

Name of person affected (e.g., patient):   
 BOB (Patient date of birth required if the Department needs to obtain medical records):

Mailing Address:

Phone Number:   
 Fax Number:   
 E-mail Address:

Name of person making complaint (if different from above):

Mailing Address:

Phone Number:   
 Fax Number:   
 E-mail Address:

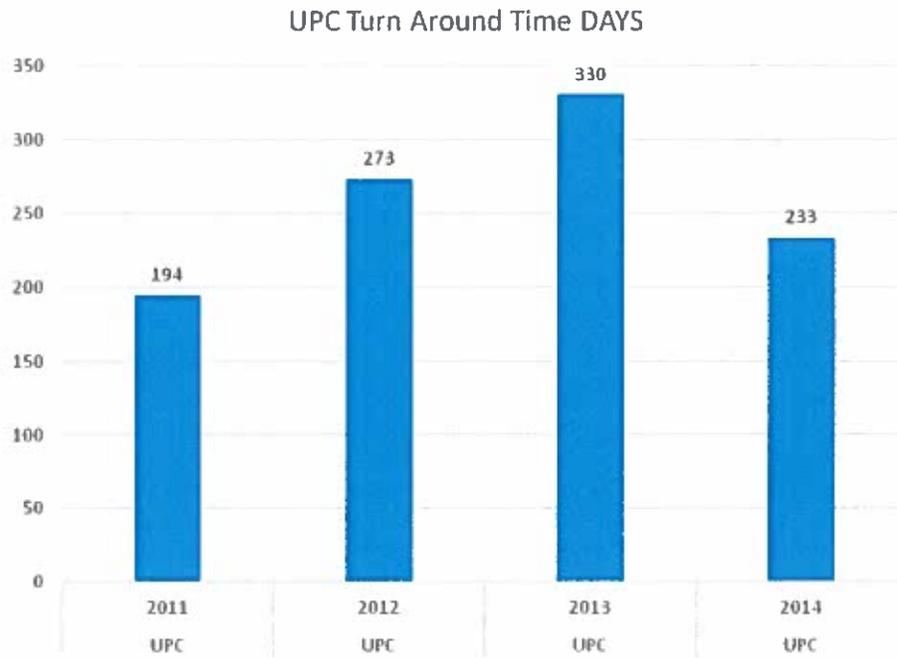
### Complaint Detail

Please be as clear, complete and concise as possible. Incomplete information may delay the investigation of your complaint. Please be advised that once the Department is in receipt of a complaint, we will move forward with our established process and the complaint cannot be rescinded.

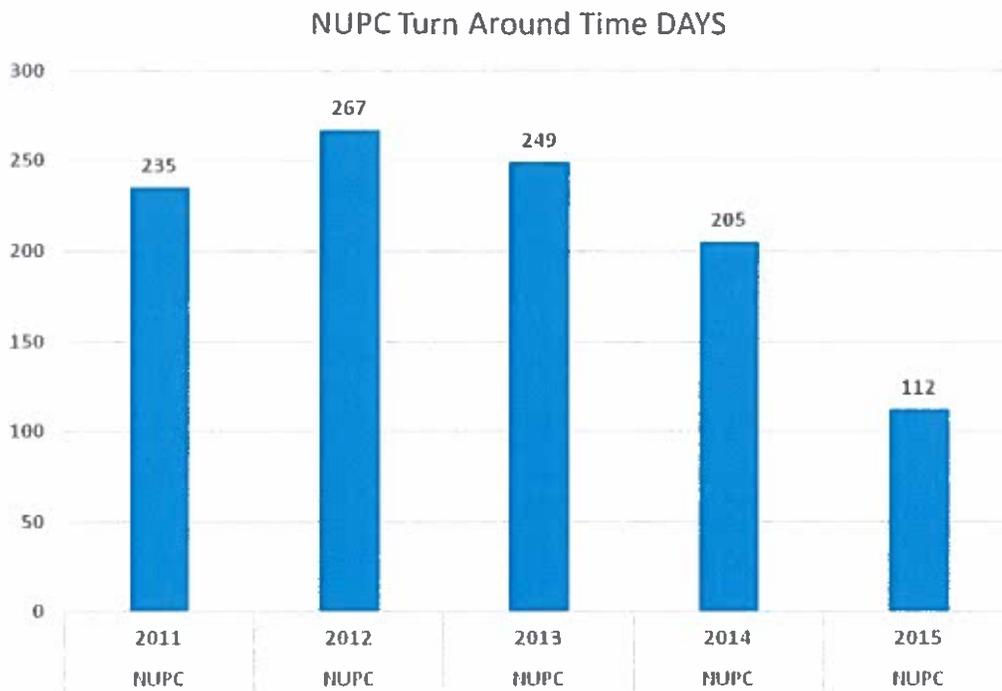
By clicking the Submit button, I hereby verify that the above statements and any associated documents that I submit in this complaint are true and accurate to the best of my knowledge and recollection and do affirm that this complaint is filed in good faith."

When you have completed entering the information, please click the "Submit Complaint" button. If you wish to cancel, please click the "Cancel" button.

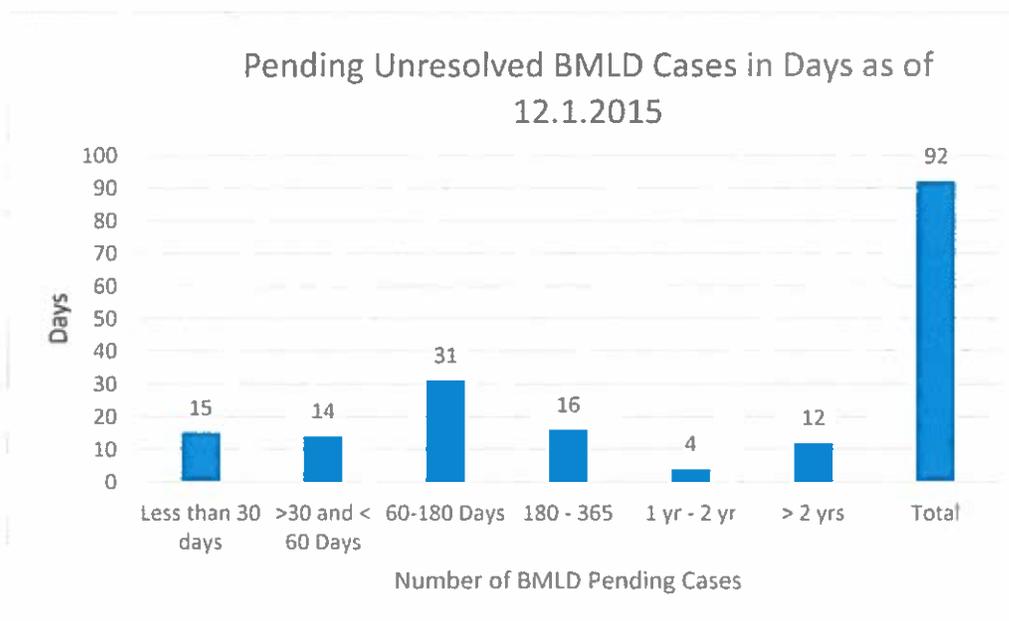
## Attachment 6: UPC Case Duration in Days



## Attachment 7: NUPC Case Duration in Days



## Attachment 8: Pending Cases by Time Unresolved



## Attachment 9: BMLD Statistics—Overview of Cases

Board of Medical Licensure and Discipline - Overview of Cases						
Year	Total Complaints Received	Complaints Opened and Investigated	Cases of Unprofessional Conduct (UPC)	Consent Orders Ratified	Final Disciplinary Actions	Directors Emergency Actions
2003	221	208	11	8	12	1
2004	294	232	12	16	20	1
2005	236	206	9	14	19	1
2006	188	214	8	17	19	1
2007	197	185	9	33	40	0
2008	159	187	13	15	16	1
2009	205	165	5	10	14	3
2010	159	190	12	14	15	0
2011	419	277	12	15	22	7
2012	518	217	30	20	26	15
2013	452	244	12	26	39	12
2014	357	161	51	23	28	3