

POLICY STATEMENT
TENNESSEE BOARD OF OSTEOPATHIC MEDICAL EXAMINATION

POLICY: GUIDELINES FOR DISCIPLINARY ACTIONS
TO BE TAKEN BY THE BOARD OF OSTEOPATHIC MEDICAL EXAMINATION

It is the policy of the Board of Osteopathic Medical Examination to utilize the following guidelines in processing disciplinary actions. It is not intended that these guidelines create any rights in any person or entity. They are merely guidelines, which whenever possible should be used to expeditiously and justly conclude disciplinary matters. However, any time a clearly unjust result might be reached as to the public health, safety and welfare, by following these guidelines, the guidelines should not be utilized or should be modified in such a manner as to more justly accommodate the circumstances of the matter.

PURPOSE: These guidelines are to further improve the contested case process in two ways:

- (1) to facilitate faster resolution of cases by encouraging settlements; and
- (2) to provide consistency in sentencing between similar cases. If two or more violations of any nature are either found or agreed to have occurred, penalties may be administered concurrently or consecutively.

Overprescribing Cases:

If either found by contested hearing or agreed order to have engaged in overprescribing as to:	Disciplinary Action Guidelines would be:
1 to 5 patients	Warning Letter or Informal Settlement up to 1 year of Probation; plus (Option) 10 hours CE.
6 to 10 patients	Probation (up to 3 years) up to Suspension (3 months); plus Civil Penalty up to \$1,000; plus 20 hours CE; plus (Option) Limitation on DEA.
11 to 19 patients	Suspension (3 months) up to Revocation; plus Civil Penalty \$500 to \$5,000; plus 30 hours CE; plus (Option) Limitation on DEA.
20 or more patients	Revocation plus Civil Penalty of \$1,000 minimum.

Fraud Cases:

If either found by contested hearing or agreed order to have engaged in fraud as to:	Disciplinary Action Guidelines would be:
1 instance	Warning Letter or Informal Settlement up to 1 year Probation; plus (Option) Civil Penalty up to \$1,000.
2 to 5 instances	Probation (up to 3 years) up to Suspension (3 months); plus Civil Penalty \$1,000 to \$2,500.
6 to 10 instances	Suspension (3 months) up to Revocation; plus Civil Penalty \$3,000 to \$10,000.
11 to 24 instances	Suspension (6 months) up to Revocation; plus Civil Penalty \$5,500 to \$24,000.
25 or more instances	Revocation plus Civil Penalty \$25,000 minimum.

Malpractice Cases: Incidents of malpractice will be assigned a point value. Each incident of malpractice in which death of a patient occurs will either be assigned 3 or 4 points depending upon the facts of each case. Each incident of malpractice in which permanent disability of a patient occurs will either be assigned 2 or 3 points depending upon the facts of each case. Each incident of malpractice in which other injury to patient occurs will either be assigned 1 or 2 points depending upon the facts of each case.

If either found by contested hearing or agreed order to have engaged in malpractice in which the total accumulated points are:	Disciplinary Action Guidelines would be:
1 to 2 points	Warning Letter or Informal Settlement up to 1 year Probation; plus (Option) CE up to 20 hours.
3 or 4 points	Probation (up to 3 years) up to Suspension (3 months); plus Civil Penalty up to \$1,000 to \$2,500; plus (Option) Proctorship or Fellowship.
5 points	Probation (up to 3 years) up to Suspension (3 months); plus Civil Penalty \$1,000 to \$2,500; plus (Option) Proctorship or Fellowship.
6 points	Suspension (3 months) up to Revocation; plus Civil Penalty \$2,500 to \$5,000; plus (Option) Mini-residency.
7 or more points	Revocation plus Civil Penalty \$5,000 minimum.

Sexual Misconduct Cases: Incidents of sexual misconduct will be assigned a point value. Each incident of misconduct in which sexual penetration occurs will be assigned 10 points. Each incident of sexual misconduct in which fondling occurs will be assigned 3 points. Each incident of sexual misconduct in which a verbal offense occurs will be assigned 1 point.

If either found by contested hearing or agreed order to have engaged in sexual misconduct in which the total accumulated points are:	Disciplinary Action Guidelines would be:
1 point	Warning Letter or Informal Settlement up to 1 year Probation; plus (Option) \$500 Civil Penalty.
2 points	Probation (up to 3 years) up to Suspension (3 months); plus Civil Penalty \$500 minimum.
3 points	Suspension (3 months) up to Revocation; plus Civil Penalty \$1,000 minimum.
4 to 9 points	Suspension (6 months) up to Revocation; plus Civil Penalty \$2,500 minimum.
10 or more points	Revocation plus Civil Penalty \$5,000 minimum.

Impairment Cases: Incidents of impairment will be assigned a point value. Each incident of impairment in which injury to a patient occurs will either be assigned 4 or 5 points depending upon the facts of each case. Each incident of impairment in which danger to patients occurs will either be assigned 2 or 3 points depending upon the facts of each case. Each incident of impairment in which no patient injury or danger to patient occurs will be assigned 1 point.

If either found by contested hearing or agreed order to have been impaired in which the total accumulated points are:	Disciplinary Action Guidelines would be:
1 or 3 points	Informal Settlement up to 1 year Probation; plus (Option) \$500 Civil Penalty.
4 to 6 points	Probation (up to 3 years) up to Suspension (3 months); plus Civil Penalty \$500 minimum; plus Treatment.
7 to 15 points	Suspension (3 months) up to Suspension (6 months); plus Civil Penalty \$1,000 minimum; plus Treatment.
16 or more points	Suspension (6 months) up to Revocation; plus Civil Penalty \$2,500 minimum; plus Treatment.

Adopted by the Board of Osteopathic Medical Examination on this the 26th day of May, 1999.

Thomas L. Ely, DO
Tennessee Board of Osteopathic Medical Examination

TE/VP/G5049287/BOE