

REPORT NO. 95-14

STATE OF FLORIDA



**OFFICE OF PROGRAM POLICY ANALYSIS AND
GOVERNMENT ACCOUNTABILITY**

REVIEW

OF THE

**LICENSING AND DISCIPLINARY PRACTICES
OF THE
FLORIDA BOARD OF MEDICINE**

December 4, 1995

The Office of Program Policy Analysis and Government Accountability was established by the 1994 Legislature to play a major role in reviewing the performance of state agencies under performance-based budgeting and to increase the visibility and usefulness of performance audits. The Office was staffed by transferring the Program Audit Division staff of the Auditor General's Office to the Office of Program Policy Analysis and Government Accountability. The Office is a unit of the Office of the Auditor General but operates independently and reports to the Legislature.

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- Whether a program is operating within current revenue resources;
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JAMES L. CARPENTER
INTERIM DIRECTOR

State of Florida

OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY

December 4, 1995

The President of the Senate,
the Speaker of the House of Representatives,
and the Legislative Auditing Committee

I have directed that a review be made of the licensing and disciplinary practices of the Board of Medicine. The results of the review are presented to you in this report. This review was conducted at the request of the Joint Legislative Auditing Committee. This review was conducted by Ms. Anna Estes and Mr. Bill Howard under the supervision of Ms. Katherine McGuire.

We wish to express our appreciation to the staff of the Board of Medicine, the Department of Business and Professional Regulation, and the Agency for Health Care Administration for their cooperation during this review.

Respectfully yours,

James L. Carpenter
Interim Director



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Summary

Review of the Licensing and Disciplinary Practices of the Board of Medicine

Purpose

This review assesses the licensing and disciplinary practices of the Board of Medicine. The specific objectives of this evaluation were to:

- Determine the percentage of active licensed physicians in Florida who are: (a) foreign-trained and domestic-trained; and (b) minority and non-minority;
- Review the licensure process for domestic-trained and foreign-trained physicians, including special licensing pathways for Cuban and Nicaraguan exiled physicians;
- Review the policy decisions made by the Board of Medicine concerning the University of Miami preparatory course offered for Cuban exiled physicians; and
- Review the disciplinary process to determine whether there are significant differences in the rates at which complaints against foreign-trained and domestic-trained physicians are dismissed and closed through legal actions, and in the sanctions imposed upon physicians by the Board of Medicine.

Conclusions and Recommendations

About One-Third of Florida's Licensed Physicians Are Foreign-Trained

There are approximately 37,500 active licensed physicians in Florida. Sixty-six percent of these doctors are domestic-trained, and 34% are foreign-trained. It was not feasible for us to determine the percentage of minority and non-minority physicians because the reporting of race on physician license applications is voluntary. Further, applicants who do report their race must select one category from six specified by the federal government; these categories include both race and ethnicity. A white hispanic would therefore have to choose between reporting as white or as hispanic. As a result, the data cannot offer a complete count of applicants in any category.

Requirements Differ for Domestic-Trained and Foreign-Trained Graduates

Licensure requirements differ for domestic-trained and foreign-trained physicians. Foreign-trained applicants must obtain Educational Commission for Foreign Medical Graduates (ECFMG) certification and complete a longer residency. All applicants must pass a standardized, nationwide examination developed by the Federation of State Medical Boards and administered by the individual states.

Foreign-Trained Graduates Have a Higher Failure Rate on the Licensing Exam than Domestic-Trained Graduates

Foreign-trained graduates, both nationwide and in Florida, have a higher failure rate on the licensure examination than domestic-trained graduates. The differences in passing rates may be influenced by several factors, including the length of time since graduation from medical school; variations in the quality and scope of education in foreign medical schools; and language difficulties.

Special Licensing Provisions for Cuban and Nicaraguan Exiled Physicians

In the past, the Legislature provided some exceptions to the licensing requirements for foreign-trained doctors: Cuban and Nicaraguan applicants were authorized to take a preparatory training course developed by the University of Miami as an alternative to the usual ECFMG certification.

A controversy developed in 1992, after the Board of Medicine approved a plan for the University of Miami to conduct a license examination preparatory course for Cuban physicians; to administer a course examination, and to certify individuals who satisfied all the course requirements set by the Board. The Board also approved a second course, sponsored by the Florida International Medical Association (FIMA) and developed by the Kaplan company.¹ The Board specified that Kaplan students would have to pass the same exam administered by the University of Miami to be eligible to sit for the Florida licensing examination.

After the Kaplan course started, representatives of FIMA asked that the requirement of a final exam be satisfied by allowing FIMA to administer an exam prepared by Kaplan. The Board rejected this proposal. At the conclusion of the two courses, all candidates were given the University of

¹ Kaplan is a commercial organization marketing self-tutorial courses for a variety of professions.

Miami examination. Kaplan students also took the Kaplan exam.

**A Controversy Developed
for Some Kaplan Students**

The Board approved those applicants who passed the University of Miami test to take the licensure examination. Shortly after, the Dean of the University of Miami School of Medicine asked that Kaplan students who did pass a Kaplan test but did not pass the University of Miami test also be allowed to take the Florida licensure examination. The Board did not approve this proposal. In making its decisions, the Board acted upon its interpretation of laws and rules, and recommendations from Board counsel. A conflicting interpretation of the rules was made by members of FIMA and Department officials. However, they did not use the administrative or judicial procedures, as provided in statute, to legally challenge the Board's decision.

**Special Cuban and
Nicaraguan Licensing
Programs Are
No Longer Offered**

The Cuban and Nicaraguan pathways are no longer offered. However, new initiatives for special licensing for exile groups are still being proposed. During the 1995 Legislative Session, several bills were introduced to exempt some foreign-trained physicians from standard licensure requirements.

A number of actions proposed in these bills may not have been feasible for technical reasons. The Federation of State Medical Boards prohibits the use of the Special Examination (SPEX) as an initial licensing exam and will not permit the translation of either SPEX or the national licensing exam. The Federation also will not allow foreign-trained applicants who have not been ECFMG certified to take the licensing exam.

Thirty-four percent or approximately 12,000 of the active licensed physicians in Florida are foreign-trained. We conclude that current licensing provisions provide qualified graduates a reasonable means to obtain licensure.

**We Recommend the
Legislature Reject Requests
for Special Licenses**

We recommend that the Legislature reject future requests for special licenses and use the United States Medical Licensing Examination (USMLE) certification process for all foreign-trained and domestic-trained physicians.

If the Legislature wishes to offer additional assistance to foreign-trained medical graduates, these programs should be accessible to qualified applicants of all nationalities.

**Options to Assist
Foreign-Trained Applicants
Are Available**

The Legislature and the Board of Medicine may wish to consider the following options, which are consistent with nationally accepted licensing standards:

- Initiate fee-based voluntary preparatory courses at Florida medical schools for ECFMG certification, including USMLE Steps 1 and 2 for all foreign-trained physicians;
- Initiate fee-based voluntary study courses at Florida medical schools for all foreign-trained physicians for USMLE Step 3 (state licensing);
- Set aside a number of residency slots in Accreditation Council for Graduate Medical Education (ACGME) accredited hospitals for the required residency program to accommodate foreign-trained physicians who have been out of school for a period of time but who have been unable to practice; and
- Solicit hospitals that are not ACGME accredited, but meet specified criteria, to provide one-year medical graduate training to physicians who have been practicing for a specified amount of time in their own country, and who are ECFMG certified and have passed Steps 1 and 2 of USMLE. Upon completing the internship and passing USMLE Step 3, issue a two-year restricted license to these physicians provided they serve in areas of critical need. The Board should ensure adequate, direct supervision of these physicians.

The Board of Medicine has proposed legislation to amend the three-year residency requirement for foreign-trained physicians to two years. This would help alleviate the problem for some foreign-trained physicians who are experiencing delays in specialty board certification. We recommend that the Legislature approve the Board of Medicine's request and revise the residency requirement to two years.

**All Complaints Go
Through a Screening Process**

We also reviewed the Board's disciplinary process. Complaints against all practicing physicians go through a screening process to eliminate those that do not have medical or legal merit. Physicians disciplined by the Board for misconduct may receive sanctions including license revocation or suspension; fines; reprimands; or probation with requirements for further professional training, supervision or treatment.

**The Board Took Action
Against a Small Number of
Foreign-Trained and
Domestic-Trained Physicians**

During 1994, 3,054 physicians had complaints against them resolved: complaints against 2,855 physicians were dismissed and complaints against 199 physicians were decided by final order. Our review indicates that the Board took action against less than 1% of all foreign-trained and less than 1% of all domestic-trained active licensed physicians in Florida. All sanctions were within the statutory guidelines.

**We Did Not Detect
Compelling Indicators
of Differential Treatment**

There was a small difference in the administration of some sanctions. Foreign-trained physicians received suspensions more frequently than domestic-trained physicians, and domestic-trained physicians received probation more frequently. However, 80% of these sanctions were administered through consent agreements approved by the physician. All other sanctions were applied similarly. Based on these facts, we do not detect any compelling indicators of differential treatment between foreign-trained and domestic-trained physicians by the Board of Medicine.

To avoid the perception or appearance of differential treatment towards foreign-trained physicians in the future, we recommend that the Board monitor the imposition of suspension and probation sanctions to ensure that they are being applied in a fair and consistent way. Further, we recommend the Board revise the disciplinary case cover sheet to exclude information regarding where the physician attended medical school.

Agency Response

The Director of the Agency for Health Care Administration agreed with the recommendations contained in our preliminary report. The Director also recommended that the Legislature authorize Florida's three medical schools to develop a preparatory course for foreign exam candidates.

Review of the Licensing and Disciplinary Practices of the Board of Medicine

CHAPTER I Introduction

Purpose and Scope

The Joint Legislative Auditing Committee, acting upon a request made by the Senate Committee on Health Care, directed this office to review the licensing and disciplinary practices of the Board of Medicine. The specific objectives of this evaluation were to:

- Determine the percentage of active licensed physicians in Florida who are: (a) foreign-trained and domestic-trained, and (b) minority and non-minority;
- Review the licensure process for domestic-trained and foreign-trained physicians, including special licensing pathways for Cuban and Nicaraguan exiled physicians;
- Review the policy decisions made by the Board of Medicine concerning the University of Miami preparatory course offered for Cuban exiled physicians; and
- Review the disciplinary process to determine whether there are significant differences in the rates at which complaints against foreign-trained and domestic-trained physicians are dismissed and closed through legal actions, and in the sanctions imposed upon physicians by the Board of Medicine.

Methodology

This review was made in accordance with generally accepted government auditing standards and accordingly included appropriate performance auditing and evaluation methods. Our fieldwork was conducted from March through September 1995.

To determine the race and educational background of active licensed physicians, we selected a random sample of 500 physicians from the population of 37,539 licensed physicians recorded on the Agency for Health Care Administration's roster as of July 13, 1995. Through the

agency's computer and microfiche files we retrieved information describing physician race and education.

To study the licensure process, we reviewed appropriate sections of the Florida Statutes and the Florida Administrative Code. We conducted interviews with Florida Board of Medicine members and staff, Department of Business and Professional Regulation (DBPR) staff and with DBPR legal staff. We also interviewed members of the foreign-trained medical community. In addition, we observed the handling of license applications.

To gain an understanding of the Board's policy decisions concerning the University of Miami course, we reviewed Board documents and audio tapes of Board meetings. We interviewed Board members, staff, and Board counsel. We also spoke with previous agency staff, the Dean of the University of Miami Medical School, and members of the foreign medical community. In addition, we spoke with Florida Department of Law Enforcement staff and reviewed the investigation report concerning the medical review course for Cuban exile physicians.

To analyze the disciplinary process we reviewed appropriate sections of the Florida Statutes and the Florida Administrative Code, and examined case investigation manuals and other Board documents. We attended Board disciplinary meetings, and interviewed Board members, administrative staff, Board legal staff and Agency legal staff. To determine whether there are significant differences between actions taken against foreign-trained and domestic-trained physicians, we analyzed all complaints that were acted upon in 1994, either by dismissal or by final order. This analysis was a two-tier process that included a random sample of 500 physicians who had complaints filed against them that were dismissed in 1994, and all 199 physicians with complaints filed against them that were resolved in 1994 by final order. We determined whether these physicians were foreign-trained or domestic-trained for comparison purposes. We also examined the way physicians elected to resolve the complaints filed against them and the frequency and severity of the sanctions imposed by the Board.

CHAPTER II Background

Program Design

Chapter 455, F.S., directs the Department of Business and Professional Regulation (DBPR) to regulate professions that could adversely impact the health, safety, and welfare of the public. DBPR has many general regulatory powers and duties, including implementing and enforcing procedures and standards for licensing and disciplining professionals.

While Ch. 455, F.S., pertains to many professions, Ch. 458, F.S., specifically addresses the practice of medicine. Chapter 458, F.S., stipulates that every physician practicing in this state meet minimum requirements for safe practice, and that physicians who fall below minimum competency or who otherwise present a danger to the public shall be prohibited from practicing. This policy is implemented by the Board of Medicine, which has established standard policies and procedures for licensing and disciplinary proceedings in Chs. 59R-1 through 59R-15, F.A.C.

In Florida, a physician, either domestic or foreign-trained, may obtain a license to practice medicine by examination or by endorsement. All 50 states use the same national examination for licensure; therefore physicians in every state take the same examination to obtain their initial medical license. This standardized examination allows physicians who are already licensed in another state and pass the Board's credential review to obtain a Florida license by endorsement, rather than re-examination.²

Complaints against practicing physicians go through an investigation and screening process to eliminate those that do not have medical or legal merit. Physicians found guilty of unprofessional conduct may be disciplined by the Board: sanctions include revoking or suspending a doctor's license; assessing administrative fines; issuing reprimands; or imposing probation with requirements for further professional training, supervision or treatment.

²Applicants who meet applicable criteria and have obtained a passing score on the licensure examination in another jurisdiction within the past ten years may be licensed by endorsement.

Program Organization

The Legislature enacted Ch. 93-220, Laws of Florida, to establish the Department of Professional and Business Regulation by merging the functions of the Department of Business Regulation and the Department of Professional Regulation, effective July 1, 1993. The head of DBPR is the Secretary, who is appointed by the Governor and confirmed by the Senate. Richard T. Farrell was appointed Secretary of the Department on February 1, 1995.

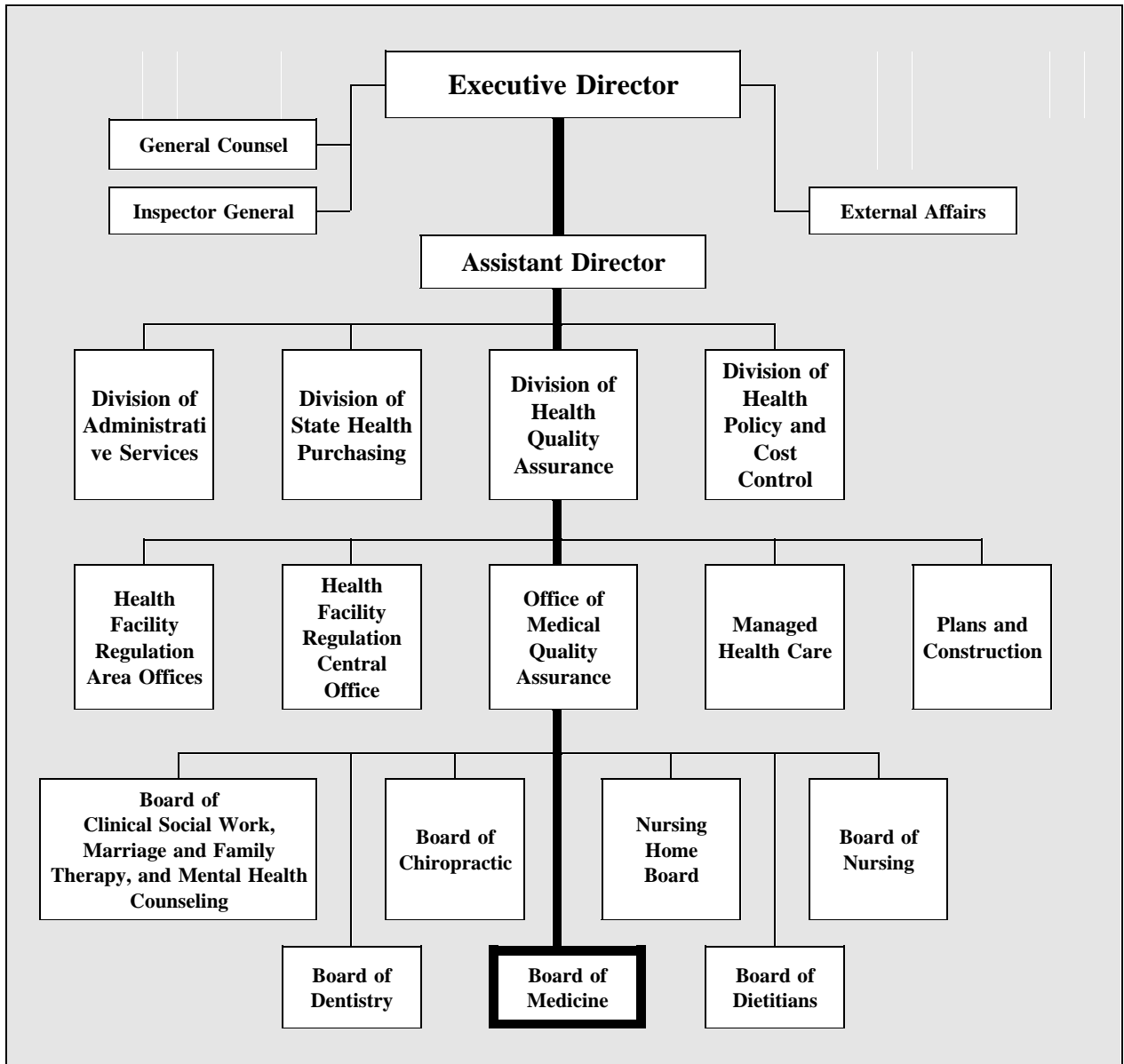
Within DBPR, the Agency for Health Care Administration (AHCA) is an autonomous entity headed by Director Douglas Cook, who was appointed by the Governor on September 1, 1992. AHCA is organized into four divisions; the Office of Medical Quality Assurance in the Division of Health Quality Assurance is responsible for health practitioner regulation. (See Exhibit 1.) This Office provides staff and support services to 28 regulated health professions, administered by boards, councils and other programs.

The Board of Medicine is authorized by Ch. 458, F.S., to regulate physicians. The Board is composed of 15 members: 12 physicians, to include a full-time faculty member of a Florida Medical School, a physician in private practice and on the full-time staff of a teaching hospital, and at least 1 foreign-trained physician; and 3 persons who have never been licensed health care practitioners. One member must be a certified hospital risk manager, and at least one member of the Board must be 60 years of age or older. Members of the Board are appointed by the Governor and confirmed by the Senate. The present composition of the Board of Medicine includes: eight caucasians, three blacks, three Hispanics, and one Asian. Two Board members are foreign-trained.

The Board is responsible for promulgating rules for professional standards and disciplinary guidelines, and for rendering final decisions on licensure and disciplinary actions. Present and past members also serve on probable cause panels to decide whether to dismiss a case or bring formal charges against a physician. Formal charges are resolved by the action of the full Board.³

³ Both current and previous Board of Medicine members may serve on the Probable Cause Panel.

Exhibit 1: Agency for Health Care Administration, Organizational Chart



Source: Agency for Health Care Administration.

Other State Agencies

Other state agencies also perform functions related to the Board's operation. Pursuant to s. 455.221(1), F.S., the Department of Legal Affairs provides legal counsel to the Board. In addition, the Division of Administrative Hearings, within the Department of Management Services, conducts administrative hearings for physicians in the disciplinary process who elect a Formal Hearing (Ch. 120, F.S.). In these cases, the Division hearing officers issue recommended orders to the Board of Medicine for final action.

Program Resources

The Florida Board of Medicine is funded by the Professional Regulation Trust Fund maintained separately by DBPR for each regulated profession (s. 455.219, F.S.). Revenues deposited into the Trust Fund include application fees, examination fees, licensure fees, and administrative fines. Revenues for the Board of Medicine in fiscal year 1994-95 were \$3,862,127; expenditures were \$7,439,161. Although expenses exceeded revenues last year, the difference will be resolved in 1995-96 by the two-year funding cycle for license renewal fees. Projected revenues for fiscal year 1995-96 are \$17,650,385. According to the Division of Health Quality Assurance, there are a total of 120 full-time equivalent positions responsible for work activities associated with the Board of Medicine.

CHAPTER III Findings and Recommendations

Chapter III of this report pertains to Physician Licensure and is organized into two sections:

- Section 1 addresses the Florida licensure process; and
- Section 2 addresses the special licensing requirements for Cuban and Nicaraguan physicians.

Because of the interrelationship between these areas, conclusions and recommendations are presented at the end of this Chapter.

Chapter IV pertains to Physician Complaint and Disciplinary procedures.

Section 1 Physician Licensure

The Florida Board of Medicine records show that as of July 13, 1995, there were 37,539 active licensed physicians on its register. This constitutes one practicing physician for approximately every 344 Florida residents.⁴ The Board issued an average of 1,854 licenses per year from 1990 through 1994. According to the most recent American Medical Association data, in 1993 Florida ranked fourth in the nation in the number of medical licenses issued, and thirteenth in physician-to-population ratio.

We reviewed physician licensure data and the Florida licensing process to determine:

- The percentage of foreign-trained and domestic-trained physicians with active Florida licenses;
- The percentage of minority and non-minority physicians with active Florida licenses;
- Licensure requirements for foreign-trained and domestic-trained physicians;

⁴ The number of physicians per resident was calculated using 1990 census data divided by the number of active licensed physicians.

-
- Licensure examination pass/fail rates for foreign-trained and domestic-trained physicians; and
 - Whether requirements for foreign-trained physicians are excessive or unduly restrictive.

The licensing process, as we observed it, is a neutral, thorough process. Each application goes through several steps to verify the applicant's credentials and is reviewed by a licensure supervisor; final approval rests with the Board. If an applicant satisfies all the requirements prescribed by statute and rule, the license will be issued.

<p style="text-align: center;">Licensed Florida Physicians: Education and Race</p>

**One-Third of Florida
Licensed Physicians Are
Foreign-Trained**

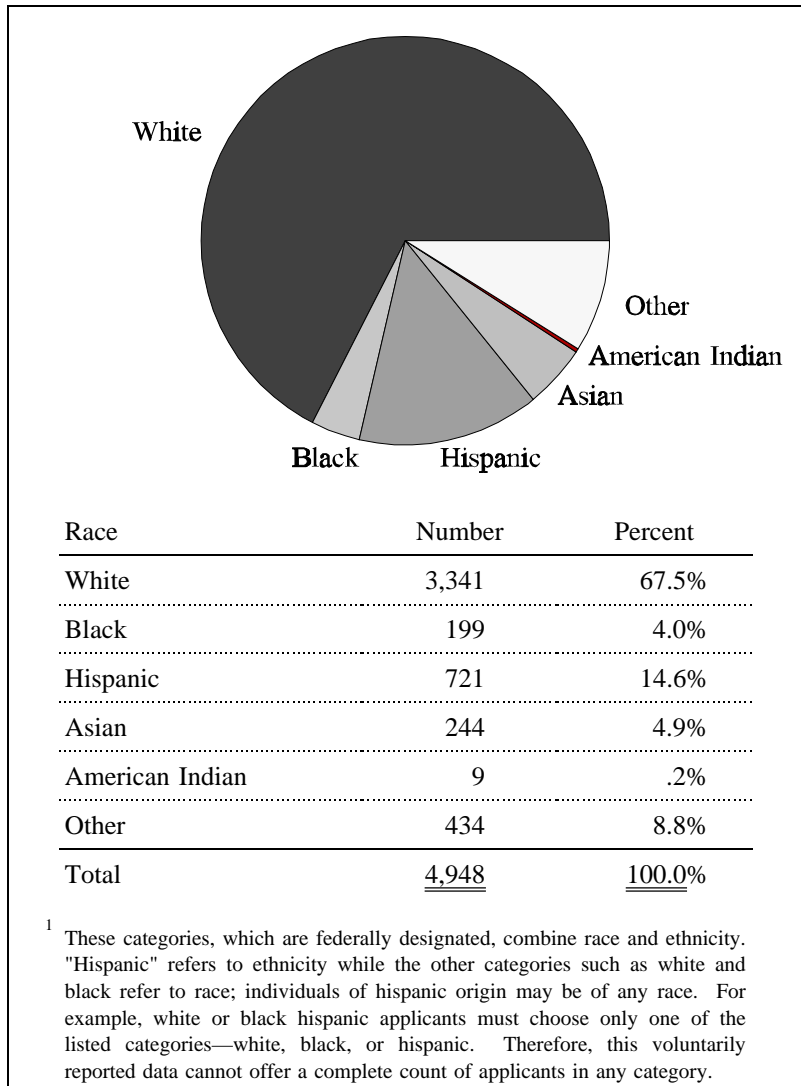
To determine the percentages of foreign-trained and domestic-trained physicians in Florida, we selected a random sample of 500 physicians from Florida's population of 37,539 active licensed physicians. We found that 34% of Florida physicians are foreign-trained, and 66% are domestic-trained. According to the most recent American Medical Association data, in 1992 Florida had the third largest number of licensed international medical graduates after New York and California, and in 1993 Florida ranked tenth in the number of initial licenses issued to foreign graduates.

**Race of Physicians
Licensed Since 1993**

Information on recent applicants, from January 1, 1993, to July 13, 1995, indicates that approximately one-third of the applicants receiving licenses are minority and two-thirds are non-minority. (See Exhibit 2.) However, it was not feasible to determine the percentage of minority physicians in the population of all active Florida licensees because a large number of older records did not contain information about race. In compliance with federal regulations, reporting race is completely voluntary on the current application; applications from 1975 to 1983 did not request even voluntary data. As a result, in our random sample of 500 active licensees, race information was available for only 69% of the records. We did not use this limited information to project race trends in licensing and disciplinary actions because recent licensing trends may not

be representative of the population of licensed physicians as a whole, as the vast majority of physicians were licensed prior to 1993.

Exhibit 2: Race of Physicians Licensed From January 1, 1993, Through July 13, 1995 ¹



Source: Board of Medicine data compiled by the Office of Program Policy Analysis and Government Accountability.

The Licensing Process

Most Licenses Are Issued by Endorsement

Physicians desiring to be licensed in Florida may obtain a license by endorsement or through examination. Chapter 458, F.S., establishes different requirements for domestic-trained and foreign-trained graduates. (See Exhibit 3.)

According to American Medical Association statistics, in 1993 the Florida Board of Medicine issued 2,244 licenses by endorsement and 117 licenses by examination. In endorsement, the Board issues a Florida license to physicians who are licensed in another state, have already passed the national examination, and meet Florida licensure requirements. If endorsement applicants have not taken the licensing examination within the previous ten years, they must demonstrate their current medical knowledge through a Special Purpose Examination (SPEX), which tests for clinical competency.⁵

Three Categories of Medical Graduates Apply for Licensure by Examination

Three categories of medical graduates apply for Florida licensure by examination:

- Domestic-trained graduates;
- U.S. citizens who go abroad to study medicine and return to the U.S. as "Fifth Pathway" candidates; and
- All other U.S. and foreign-born graduates who study medicine and/or practice in another country and obtain Educational Commission for Foreign Medical Graduates (ECFMG) certification.

Schools of medicine that are located in the U.S., its territories, and Canada are accredited by the U.S. Department of Education. Graduates of these institutions are considered to have met Board standards of education and typically sit for portions of the licensing examination while in medical school. These domestic graduates are required to complete at least one year of residency prior to taking the final segment of the licensing examination.

⁵ SPEX is also used for re-examination of selected physicians as part of the disciplinary process and for reinstatement or reactivation of a license.

Many medical specialties, such as family medicine, internal medicine, and neurosurgery, require more than one year of residency.

Some U.S. citizens attend foreign medical schools offering a "Fifth Pathway" Program. These individuals hold U.S. undergraduate degrees and foreign medical degrees and complete a year of supervised clinical clerkship and three years of residency in the U.S. However, there are very few accredited hospitals offering the clinical clerkship and none of them are located in Florida. There are two hospitals participating in this program in New York, one in Rhode Island, and one in the U.S. territory of Puerto Rico; however, these institutions prefer to accept in-state applicants for the available slots. Therefore, Florida residents who go abroad to study and attempt to return to Florida to complete their clerkship are unable to do so. Florida institutions have never offered Fifth Pathway clerkships, although an applicant who has completed a clerkship in another state may complete the three-year residency in Florida. Fifth Pathway applicants are eligible to take the licensure examination upon completion of their residency. Florida issues a small number of licenses to Fifth Pathway applicants each year.

All other foreign medical graduates, both U.S. and foreign-born, must obtain ECFMG certification. Florida, like all other states, relies on the ECFMG to review and certify graduates of widely varying international medical programs, to administer the first two steps of the three-step licensing examination, and to certify readiness of graduates of foreign medical schools to enter accredited American residency programs. Florida also requires foreign-trained medical graduates to complete three years of residency before sitting for the final segment of the licensing examination.

Exhibit 3: Requirements for Florida Licensure

Requirements for Licensure by Examination							Requirements for Licensure by Endorsement
Domestic Graduates	Foreign Graduates	5th Pathway	Nicaraguan Exiles	Cuban Exiles REPEALED 10-1-93	Special Purpose Examinees		
Fees	Application fee \$410; exam fee \$600	Same	Same	Same	Same	Same	Application fee \$460; no exam or exam fee
Background	Applicant is at least 21 years of age; good moral character; and no prior criminal offense	Same	Same	Same	Same	Same	Same
Education	After 10-1-92 prerequisite undergraduate courses	Same	Same	Medical education verified by Board, and determined to be similar to U.S. programs	Same as Nicaraguan	Same as Domestic	Same as Domestic
Medical School	Graduate of an accredited medical school	Graduate of a foreign medical school not certified by the state of Florida	Graduate of foreign medical school participating in Fifth Pathway Program	Graduate of a medical institution in the Western Hemisphere listed by WHO	Graduate of a medical institution in a Western Hemisphere country that does not have diplomatic relations with U.S.	Same as Domestic or Foreign	Same as Domestic or Foreign
Qualifying Exams	Achieved passing grade of 75 or more on a qualifying exam	ECFMG certified; plus same as Domestic	ECFMG examined; plus same as Domestic	Completed ECFMG requirements or University of Miami training course	Same as Nicaraguan and must pass University of Miami exam	Same as Domestic, Fifth Pathway, or Foreign	Same as Domestic
Residency	Completed approved residency of at least one year	Completed three years approved residency	Completed one year of supervised clinical training in an approved hospital, and three years approved residency	Not applicable	Not applicable	Completed one to three years approved residency	Completed one to three years approved residency
Previous Practice	None	None	None	Two-year restricted license	One-year restricted license	None	None
Licensing Exam	Achieved passing grade of 75 or more on USMLE Step 3	Same	Same	Achieved passing score of 75 or more on FLEX (used previously by Florida as the licensing exam)	Same as Nicaraguan	Achieved passing grade of 75 on the SPEX exam	Achieved passing grade of 75 on licensing exam in another jurisdiction
Initial Practice Requirements	None	None	None	Practiced medicine in Nicaragua at least one year	Practiced medicine in a foreign country from which he immigrated	Actively practiced for a period of ten years	Evidence of active practice in other jurisdiction at least two of four preceding years
Additional Requirements				Has lawful employment authority; applied before 7-1-92	This pathway repealed 10-1-93		

ECFMG The Education Commission for Foreign Medical Graduates
 FLEX Federation Licensing Examination
 SPEX Special Purpose Examination

USMLE United States Medical Licensing Examination
 WHO World Health Organization

Source: Developed by the Office of Program Policy Analysis and Government Accountability.

**Are Florida Requirements for
Foreign-Trained Physicians Upholding
Quality or Limiting Competition?**

Currently, all foreign-trained applicants must be certified by the ECFMG and complete three years of residency or successfully complete a "Fifth Pathway" program to qualify for Florida licensure. Special licensing procedures for Cuban and Nicaraguan exiled physicians are no longer available, as discussed in Section 2 of this Chapter. The requirement for ECFMG certification and the longer residency requirements have caused many foreign-trained medical graduates to question "whether the process constitutes legitimate quality assurance or intentional restriction of access into the medical profession." ⁶

The Board of Medicine relies on the ECFMG to review and certify each international medical graduate's credentials. This would be extremely costly to the state and time-consuming for foreign-trained applicants if the state were to undertake such certification on its own. Chapter 458, F.S., permits foreign medical schools to apply for Florida evaluation and certification, but to date no school has been approved. Also, ECFMG certification is a prerequisite for foreign-trained graduates to take the United States Medical Licensing Examination.

**Foreign-Trained Graduates
Residency Requirements
Are Two Years Longer
Than Domestic-Trained
Graduates**

The ECFMG certification process is used to ensure that foreign graduates meet minimum standards of eligibility for U.S. residency programs. Some members of the foreign medical community consider the extra two years of residency required—beyond the one-year requirement for domestic-trained physicians—unnecessary, particularly for physicians who have practiced for a number of years in another country. This requirement is a result of concern over the clinical training received at some foreign medical schools, particularly schools located in countries that may be less technologically advanced. The three-year residency requirement is used by 28 other states. ⁷

⁶ Foreign Graduate Applicants for Florida Professional Licensure, Roberto Pelleya, J.D. Consultant, Florida Department of Professional Regulation, June 1991.

⁷ 1995 Edition U.S. Medical Licensure Statistics and Current Licensure Requirements, American Medical Association.

The Board of Medicine has recommended that the three-year residency requirement be reduced to two years. This would solve a problem some foreign-trained physicians are having with delays in specialty board certification. These candidates need to obtain their Florida license to qualify for the annual specialty board examination. This exam occurs shortly after the completion of residency training. Without a license these applicants must wait another year, until the next testing cycle, to obtain specialty board certification. This certification is a requirement for many health maintenance organizations and hospital positions.

Medical training, practice, and technology vary extensively throughout the world. While certification and residency training are critical health and safety issues for the public, they also constitute business risks for hospitals, health maintenance organizations, and insurers. According to the chief underwriter for one of the primary insurers of Florida physicians, insurance companies rely on the licensure process to certify that foreign-trained physicians are acceptable risks.

**72% of Foreign-Trained
Graduates and 17% of
Domestic-Trained Graduates
Fail the Florida Medical
Licensing Exam the First
Time They Take It**

Many foreign-trained physicians have difficulty passing the licensure examination. We obtained the state pass/fail rates for foreign-trained and domestic-trained graduates for the licensure examination, which is taken at the conclusion of residency. As shown in Exhibit 4, in Florida in 1993, a significantly higher percentage of foreign-trained graduates who were first-time takers, 72%, failed the examination than domestic-trained first-time takers, 17%. The difference in failure rates between foreign-trained (87%) and domestic-trained (73%) applicants retaking the test is not as high because all those who fail the examination are less likely to pass it upon re-examination. Foreign-trained graduates also had a higher failure rate nationwide than domestic-trained graduates.

**Exhibit 4: Florida and Nationwide December 1993
FLEX Examination Failure Rates by
Educational Training**

	Florida		Nationwide	
	Examinees	Percent Failed	Examinees	Percent Failed
<i>First-Time Takers</i>				
U.S./Canadian	24	17%	1,359	12%
Foreign	43	72%	6,678	22%
<i>Repeaters</i>				
U.S./Canadian	15	73%	277	70%
Foreign	129	87%	1,724	79%

Florida statistics include applicants taking one or both components; national statistics include only applicants taking both components.

Source: The Federation of State Medical Boards of the United States, Inc.; Department of Business and Professional Regulation, Bureau of Testing.

The differences in passing rates between foreign-trained and domestic-trained applicants for the licensure exam may be influenced by several factors. For example, both Florida and national data show that applicants who have been out of medical school significantly longer have higher failure rates. In addition, Florida records for the December 1993 exam indicate that applicants over 36 years of age had higher failure rates than younger applicants. Many foreign-trained applicants fall into both of these categories. There also appears to be wide variation in the quality and scope of the education of foreign-trained applicants. Finally, some foreign-trained applicants may have had difficulty with the exam because it was not translated into their native language.

The combined results of the large number of older foreign-trained applicants with a high failure rate, and the high failure rate of retakers, probably accounts for Florida having one of the highest examination failure rates in the nation. (See Exhibit 5.)

Exhibit 5: States With Highest Percent of Examinees Who Failed FLEX (1993)

State ¹	Examinees ²	Percent Failed ³
1. Puerto Rico	324	82%
2. Alabama	23	78%
3. Florida	363	77%
4. New Jersey	76	76%
5. Washington, D.C.	21	67%
6. West Virginia	103	66%
7. New York	1,757	60%
8. Delaware	15	53%
9. Kansas	26	50%
10. New Mexico	18	50%
Total Examinees Nationwide ²		19,987
Percent Failed		32%

¹ Includes Guam, Puerto Rico, the Virgin Islands, the District of Columbia, and the 50 states.
² Examinees taking both components.
³ Percent who failed either one or both components.

Source: 1995 Edition, U.S. Medical Licensure Statistics and Current Licensure Requirements, American Medical Association.

Florida Uses the National Licensing Exam

Prior to 1979, Florida administered its own state-developed medical licensure examination. Because licensure requirements varied from state to state, the use of state-developed licensure examinations made it difficult for doctors who wanted to practice in other states. As part of a national effort for standardization of medical credentials, in 1979 Florida began using a nationwide examination for initial licensing called FLEX. FLEX was developed by the Federation of State Medical Boards of the United States. In January 1994, all states including Florida replaced the FLEX with the United States Medical Licensing Examination (USMLE) which was also developed by the Federation.

**The Federation of
State Medical Boards
Believes the Test is Fair**

Foreign-trained students' educational experiences and cultural backgrounds are often different from their American counterparts. We contacted the Federation of State Medical Boards to determine if the USMLE has been reviewed for cultural and racial bias, which is a common concern among experts who develop national standardized tests. The Federation indicated to us that the USMLE has not been reviewed for cultural and racial bias because the examination sequence is designed to assess a well-defined body of knowledge which utilizes highly specific terminology in a contextual setting to evaluate the acquired knowledge and skills of medical professionals. While the Federation believes that tests of this nature are less susceptible to racial, ethnic, and cultural biases, it makes every effort to guard against such bias in the examination by careful and systematic content review of every question. According to the Federation, expert test committees comprised of medical school faculty, practicing physicians, and other members of the medical community conduct these reviews during the final stage of test development.

**Florida Is Not Authorized
to Translate the
National Exam**

Some members of the foreign medical community raised the issue of translating the licensure examination to applicants' native languages. Chapter 455, F.S., which pertains to all professional boards, allows the Department to give translated examinations, provided the cost is borne by the applicant. Presently the Department offers translated examinations in a limited number of languages for cosmetologists, barbers, and mental health counselors. None of the Florida health care boards offer a translated examination, although the Board of Dentistry explored the idea and found it infeasible.

The Board of Medicine's use of the national USMLE precludes translation because the Federation will not allow it. Therefore, a translated medical examination is not available in any state or U.S. territory. The Federation is opposed to translating the USMLE because it believes that English comprehension is necessary to the safe, effective practice of medicine in the U.S. The Federation is also unwilling to translate the examination because it believes there is a significant chance of lessening test validity and fairness. And finally, the Federation is concerned that there may not be nationwide acceptance of translated examinations, which would reduce the standardization the USMLE was created to provide.

Section 2 Special Licensing Requirements for Cuban and Nicaraguan Exiled Physicians

The issue of licensing foreign-trained physicians has been an ongoing concern in Florida for more than two decades. Every few years a new wave of immigrants or refugees, mainly from countries in the Western Hemisphere, adds to the growing number of foreign-trained professionals. Over the years several licensing opportunities have been provided by the Legislature in addition to the regular licensing procedures for foreign-trained physicians.

In 1974, Ch. 74-105, Laws of Florida, directed the professional boards, including the Board of Medicine, to create continuing education programs for persons who lawfully practiced in another country prior to July 1, 1974. Applicants who passed the continuing education class and the state licensing examination were granted licenses. The course and the examination were allowed to be translated. Medical applicants were required to complete one year of approved internship or to demonstrate five years of private practice in their native country. The Board developed an examination which was translated into Spanish and offered until 1979. In 1979, the Board joined the nationwide movement toward a standardized examination and adopted the national Federation Licensing Examination (FLEX) as a licensing examination. The proprietors of this examination did not allow the use of a translated version.

Legislation in 1977 had narrowed eligibility for the special licensure program, so that only qualifying exiled Cuban professionals could participate. In 1986, Ch. 86-245, Laws of Florida, stipulated new requirements for Cuban candidates and authorized the completion of a preparatory training course developed by the University of Miami as an alternative to the Educational Commission for Foreign Medical Graduates (ECFMG) certification, which was required for other foreign-trained physicians.

Another special avenue was established by the Legislature in 1989 for the benefit of the Nicaraguan exiled physicians. Chapter 89-266, Laws of Florida, allowed Nicaraguan nationals who satisfied certain requirements to use the University of Miami course as a substitution for ECFMG certification.

Section 458.311, F.S., provided that each applicant must have approval from the Board of Medicine prior to taking

the University of Miami course and must demonstrate, to the satisfaction of the Board, successful completion of course requirements. Successful course completion differed for the two groups. Cuban physicians were required to achieve a score of at least 75 on the University of Miami course test, while Nicaraguan physicians were not required to have a scored test. Both groups were required to attend 75% of class hours. Both groups were required to pass the FLEX; however, Cuban physicians then received a one-year restricted license, while Nicaraguan physicians received a two-year restricted license.⁸ The Nicaraguans served their two years under supervision in "areas of critical need," where medical care was urgently needed.

**University of Miami and
Kaplan Preparatory Courses**

According to the Dean of the University of Miami School of Medicine, the University had been active with the Hispanic population of Dade County in conducting preparatory courses for ECFMG. Therefore, the Dean was willing to offer a course that would help Cuban physicians prepare for FLEX, especially since a similar University of Miami course conducted for Nicaraguan physicians concluded satisfactorily in 1990. The Dean appeared before the Board of Medicine at its December 1991 meeting and proposed that the University of Miami administer the course and the course examination, and certify individuals who satisfied all the course requirements set by the Board.⁹ These applicants would have just three chances to pass the examination, instead of the usual six, because the FLEX was to be replaced in 1994 by the USMLE. The cost of the course was \$10,000. The Board approved the Dean's plan.

**The Board Approves
the Kaplan Course**

Members of the exiled physicians community and the Florida International Medical Association (FIMA) objected to this price, and eventually suggested to the Dean an additional, less costly alternative developed by the Kaplan

⁸ After the period of restricted licensure, these physicians were eligible for full medical licenses.

⁹ The actual course and test administered by the University of Miami was developed by Tulane University.

company.¹⁰ After examining the Kaplan material, the Dean approached the Board of Medicine at its February 1992 meeting. He requested that the University of Miami be permitted to endorse the Kaplan course in addition to the University of Miami course; to supervise both courses; to administer the same examination at the conclusion of both courses; and to certify the candidates to the Board as having met the same requirements, which would permit them to also sit for the FLEX. The Board gave its approval, although the members had reservations about the legality and the equity of the course, and the message that could be inferred by the Legislature that even a non-academic based course will suffice to obtain a medical license.

Approval of the Kaplan Course Was the Beginning of an Emotional Controversy

The Board's approval of the alternate course, which was meant to assist the foreign exile community, turned out to be the beginning of an emotional controversy. After the course started, representatives of FIMA attempted to revise some of the conditions stipulated by the Board. In July 1992, they petitioned the Board to accept physicians from other countries, in addition to Cuba, into the Kaplan course. The Board's counsel pointed out that the statutes limited the course to Cubans only, and the Board rejected the petition. On October 15, 1992, the Director of FIMA wrote to the Dean requesting two amendments to the Kaplan course authorization. First, that FIMA be responsible for certifying attendance at the Kaplan course. And second, that the requirement of a final exam administered by the University of Miami be satisfied by allowing FIMA to administer an exam prepared by Kaplan. The Dean took these issues to the Board in October 1992. The Board rejected the proposals and again stipulated that the Kaplan students must pass the same examination that was to be administered by the University of Miami in order to be certified to take the FLEX.

At the conclusion of the courses, candidates who were approved by the Board to take either the University of Miami or the Kaplan course were given the University of

¹⁰ Kaplan is a commercial organization marketing self-tutorial courses for a variety of professions.

Miami examination on November 7 and 8, 1992.¹¹ In addition, on November 11 and 12, all the Kaplan students also took the Kaplan test. A total of 251 Board-approved candidates attended the University of Miami (101) and Kaplan (150) programs combined. The Dean, in his letter of November 12, 1992, to the Board, certified 198 individuals (101 University of Miami and 97 Kaplan students) as having successfully fulfilled the attendance requirements and passed the University of Miami examination.

Only Physicians Who Passed the University of Miami Exam Were Allowed to Take the Licensure Exam

On November 19, the Board of Medicine certified these 198 applicants as eligible for the FLEX. At that time, a representative of FIMA asked the Board to reconsider and allow those applicants who passed the Kaplan examination but not the University of Miami examination to take the FLEX. The Board again rejected the request. On November 24, at FIMA's request, the Dean brought up the certification issue again in a letter, recommending that the Board certify the Kaplan students because the course material and the tests were comparable. The Board responded to his request with an emergency telephone conference. During this conference several of the Board members were willing to accept the Dean's proposal; other members cited the Board's previously expressed position on this issue. The motion to approve both the University of Miami and the Kaplan examinations as acceptable for qualifying the candidates resulted in a tie vote, and therefore failed. Nonetheless, on November 25, the Dean sent another letter to the Board certifying individuals who passed the Kaplan examination but not the University of Miami examination. No further action was taken by the Board, and the FLEX examination was held on December 1-3, 1992.

A total of 346 foreign-trained physicians were approved to take the courses offered by the University of Miami in 1990 and 1992. At the conclusion of the 1990 Nicaraguan course all 95 physicians were certified to take the FLEX licensing examination, and 20 passed on the first try. Subsequently, they had six more opportunities to pass, and eventually 40 of the 95 (42%) passed FLEX. In 1992, 198 Cuban

¹¹ Some improprieties were alleged to have occurred during the administration of the University of Miami exam to the University of Miami class. Although reviewed by the Board of Medicine and the Florida Department of Law Enforcement, no conclusive information was reported.

physicians were certified from the University of Miami and Kaplan courses; 25 passed the FLEX examination on the first try. They had two more occasions to sit for the examination before FLEX was discontinued. A total of 53 of the 198 (27%) applicants passed from this group. The final outcome for all individuals certified as eligible for the state's licensure examination under ss. 458.311(8) and (10), F.S., was a 32% passing rate. (See Exhibit 6.)

Exhibit 6: Results of 1990 and 1992 Medical Preparatory Courses

	Nicaraguans 1990	Cubans 1992 Courses		
	University of Miami (UM) Course	UM Course	Kaplan Course	Total
Completed Medical Course	95	101	150	251
Passed UM Exam ¹	95	101	97	198
Percent Passed FLEX:				
First Time	21%	15%	10%	13%
First Time and Retake Combined	42%	---- ²	---- ²	27%
Combined Percent Passed FLEX 1990 Course and 1992 Courses				32%

¹ Only candidates who passed the University of Miami exam were approved to sit for the FLEX.
² In total 53 candidates who attended either the 1992 University of Miami course or the Kaplan course passed the FLEX. Information was not available on the number who passed the FLEX from each group.

Source: Florida Board of Medicine.

In making these decisions, Board members acted upon their interpretation of the laws and rules, and recommendations from Board counsel. Counsel advised the Board that it could delegate authority to other entities or persons with stipulations. In this case the Board delegated the authority to the University of Miami to certify applicants who met Board standards.

Some Department officials, including the Secretary, interpreted the rules to allow the University of Miami, rather than the Board, to decide which students to certify for FLEX. However, they did not appeal the Board's decision, either by administrative or judicial review, as provided for by Ch. 120, F.S. FIMA also elected not to appeal. The Governor's Office, which had also expressed concern over the Board's decision, later withdrew its opposition.

We examined all documents pertaining to the various Board meetings where decisions were made regarding this issue. These documents, reflecting the Board's actions, clearly establish the Board's intentions for the University of Miami to administer both courses and give the same examination. Furthermore, these actions were known to all relevant parties through correspondence and participation in the various meetings and telephone conferences. However, the conflicting interpretations of the rules between the Board, members of FIMA, and Department officials may have contributed to the lasting controversy.

**Present Status of Cuban and
Nicaraguan Licensing
Programs**

At present, the Cuban and Nicaraguan pathways are not viable options for new candidates to obtain a medical license. The Legislature repealed the program for the Cuban exiles effective October 1, 1993. The Nicaraguan program required physicians to submit applications prior to July 1, 1992. Although Nicaraguan candidates can reapply if they failed the FLEX, since USMLE replaced FLEX in 1994, these candidates are not eligible to take USMLE Step 3 without first passing USMLE Step 1 and 2. While these two special programs were in effect, 111 Cuban and 25 Nicaraguan physicians obtained full licensure. A few Cuban (4) and Nicaraguan (17) physicians who are still holding restricted licenses will be eligible for full licensure upon completion of their restricted license periods.

<p style="text-align: center;">Licensure of Foreign-Trained Physicians in Other States</p>

Bills providing special licensing opportunities for specific groups of people are fairly unique to Florida. We contacted medical boards of three states with large numbers of foreign medical graduates to inquire whether they provide exclusive pathways to any segment of foreign medical applicants. We spoke with representatives in California, New York, and Texas. California has a large number of Vietnamese and Russian immigrant physicians. The California Code of Regulations Title 16, Section 1324, provides for an alternative training program for foreign-trained physicians who are unable to gain admission, usually because of age or time spent away from medical practice due to relocation, into programs accredited by the Accreditation Council for Graduate Medical Education. The Section 1324 program enlists the help of additional health facilities that meet certain criteria and are accredited by California but are not affiliated with medical schools. The candidates have to have ECFMG certification and passing scores on USMLE Steps 1 and 2. After one year of clinical training at these health facilities, foreign applicants are allowed to sit for USMLE Step 3. The licensing process also includes an oral examination. However, California is presently reassessing whether this program adequately prepares foreign-trained physicians for independent practice since their failure rate on the licensing examinations is three times as high (15%) as that of the overall applicant population's (3% to 5%).

The representative from New York stated the only exception or allowance New York makes for political exiles is that it accepts an affidavit from persons having special knowledge about the candidate's educational background instead of a diploma. Otherwise, anyone from an unaccredited school has to have ECFMG certification, three years of residency and a passing score on USMLE Step 3.¹²

The Texas representative said the state considers all foreign-trained physicians as graduates of unapproved

¹² New York also registers a few foreign medical schools, such as the American University of Beirut.

schools: they are required to have ECFMG certification, three years of accredited training, and a passing score on Step 3 of USMLE to qualify for a Texas medical license. Texas does not have any special licensing avenue for any distinct group of people.

Legislative Initiatives

Although special avenues for foreign medical graduates are no longer available in Florida, initiatives to re-establish unique licensing pathways for exile groups are still being proposed. During the 1995 Legislative Session, several bills were introduced to help foreign-trained physicians gain licensure by circumventing the need for USMLE examination. One bill would have allowed foreign-trained physicians who had practiced previously in other countries to obtain a two-year restricted license to practice medicine in Florida. The bill would have required the physicians to pass a clinical competency test (SPEX), which the bill proposed translating. Another bill would have granted two-year restricted licenses to a specific group of foreign-trained physicians who completed the 1992 University of Miami review program and would have exempted them from any licensure examination. This bill, Senate Bill 1656, passed both chambers, and was forwarded to the Governor. The Governor, citing possible danger to the public, vetoed the bill.

A number of actions proposed in these bills may not have been feasible for technical reasons. For example, House Bills 2437 and 1899 proposed the use of the Special Examination (SPEX), instead of the USMLE as an initial licensing examination. SPEX is owned and copyrighted by the Federation of State Medical Boards and the National Board of Medical Examiners. According to the Federation, the purpose of SPEX is to re-examine physicians' clinical skills if there has been a hiatus in their practice, or their competency is in question. The Federation has notified the Board of Medicine that if the state attempts to use SPEX for initial licensing the Federation may prohibit the state of Florida from using SPEX altogether.

Also, these bills contained provisions for translating SPEX. This is not feasible. Citing concerns over test validity,

fairness, and the need for physicians practicing in the U.S. to be fluent in English, Federation representatives stated they are unwilling to allow Florida to translate the examinations. Florida would have to develop its own clinical competency test to offer it in other languages, and it is unlikely that these tests would be accepted in other states.

And finally, the Board cannot offer the state licensing examination, USMLE Step 3, to foreign-trained candidates who have not been ECFMG certified. The Federation, which controls the distribution of the examinations, will not issue a test booklet to any person who has not passed Steps 1 and 2 and been certified.¹³

To solve these problems, Florida could go back to developing its own examination. However, this would be a very labor-intensive and costly project, considering the need for continual updating of the test material due to rapidly changing technology. In addition, because all states have adopted a standardized, nationwide examination to ensure medical quality, it is unlikely that other states would accept such a license. This would hamper the free movement of practitioners between states and jeopardize the professional standing of all Florida physicians.

Similarly, issuing licenses to a special group of people who did not pass a state licensing examination would likely make Florida licenses suspect and unacceptable in other jurisdictions. According to Board, Federation, and insurance company representatives, adopting a licensure process that does not ensure minimum competency would jeopardize the professional standing of all Florida physicians. Such a license would also fail to protect the public health, safety, and welfare.

Conclusions and Recommendations

State licensure laws have been enacted to protect the public health, safety, and welfare. Use of the national examination for domestic-trained and foreign-trained physicians ensures that Florida medical standards are comparable to national

¹³ ECFMG certification requires foreign graduates to provide documentation of the completion of all educational requirements to practice medicine in the country in which the medical education was received. However, ECFMG staff stated that refugee physicians can supply three attestations (a form of affidavit) from U.S. licensed physicians who have knowledge about the applicant's medical education, in lieu of documents.

standards, and facilitates the movement of practitioners between states. The chief underwriter for one of the primary insurers of Florida physicians also stressed the extreme importance of maintaining high standards in state licensing. Insurers, as well as health providers such as hospitals and managed care companies, rely on the state licensing procedures to determine that a physician is an acceptable risk. Therefore, using the USMLE for Florida licensure of domestic-trained and foreign-trained physicians seems appropriate.

Given the variation in medical training for foreign-trained graduates and the difficulty these graduates have, as a group, passing the licensure examination, decreasing the residency requirement to one year does not seem to be in the best interests of the public or the foreign-trained applicants. We also note that many domestic-trained graduates also complete more than one year of residency to satisfy requirements for areas of medical specialization, including family medicine, internal medicine, and neurosurgery.

The Board of Medicine has proposed legislation to amend the three-year residency requirement for foreign-trained physicians to two years. This would solve a problem some foreign-trained physicians are having with delays in specialty board certification. We recommend that the Legislature approve the Board of Medicine's request and revise the residency requirement to two years.

Thirty-four percent of all active licensed physicians are foreign-trained; approximately 12,000 physicians have obtained licensure through the regular certification and examination process for foreign graduates. This is the third largest foreign-trained physician census in the U.S. We conclude that current licensing provisions do not appear to be inhibiting qualified graduates from obtaining licensure.

Through the years, additional pathways have been developed for special groups of foreign graduates, requiring considerable administrative effort by the state and the Board. On occasion, persons who were not able to meet the requirements for these special licenses have asked the Legislature for further allowances in licensing provisions. This process has been a burden to the Board and an irritant

to qualifying physicians for over 20 years. Special provisions do not advance public safety. They also reduce the standing of the entire Florida medical community. We recommend that the Legislature reject requests for special licenses and use the USMLE program for certifying all foreign-trained and domestic-trained physicians.

If Florida wishes to develop additional procedures to help foreign-trained medical graduates enter the licensed medical community, the Legislature should explore ways that correspond to nationally accepted standards. Further, as these licensing requirements impact all foreign-trained physicians, any assistance program should be accessible to all qualifying individuals.

To ensure high quality patient care and address the concerns of foreign-trained physicians, the Legislature could provide assistance by establishing conditions that would increase these physicians' success rate in gaining ECFMG certification and passing the national licensure examination, rather than by eliminating these requirements.

Keeping in mind that nationwide standardized testing prohibits the use of many avenues previously considered in proposed legislation, the Florida Legislature and the Florida Board of Medicine could consider the following options:

- Initiate fee-based voluntary preparatory courses at Florida medical schools for ECFMG certification, including USMLE Steps 1 and 2 for all foreign-trained physicians;
- Initiate fee-based voluntary study courses at Florida medical schools for all foreign-trained physicians for USMLE Step 3 (state licensing);
- Set aside a number of residency slots in Accreditation Council for Graduate Medical Education (ACGME) accredited hospitals for the required residency program to accommodate foreign-trained physicians who have been out of school for a period of time but who have been unable to practice; and
- Solicit hospitals that are not ACGME accredited, but meet specified criteria, to provide one-year medical graduate training to physicians who have been

practicing for a specified amount of time in their own country, and who are ECFMG certified and have passed Steps 1 and 2 of USMLE. Upon completing the internship and passing USMLE Step 3, award a two-year restricted license to these physicians provided they serve in areas of critical need. The Board should ensure adequate, direct supervision of these physicians.

CHAPTER IV

Physician Complaint and Disciplinary Processes

During 1994, 3,054 physicians had complaints against them resolved: complaints against 2,855 physicians were dismissed and complaints against 199 physicians were decided by final order. We reviewed the complaint and disciplinary process to determine whether there are significant differences between domestic-trained physicians and foreign-trained physicians in:

- The rate at which their cases are dismissed from the complaint process;
- The rate at which their cases are closed through final order; and
- The sanctions that are applied against them.

We were unable to run a comparable analysis by race. As explained in Chapter III, a large proportion of the Department's records, particularly for physicians licensed prior to 1993, do not contain information on race and ethnicity.

To analyze complaints that were acted upon in 1994, we reviewed: (1) dismissed complaints by drawing a random sample of 500 physicians that were the subject of dismissed complaints, and (2) all 199 cases against physicians who were the subject of complaints that were closed through a final order.

We found that the overwhelming majority of complaints against both foreign-trained and domestic-trained physicians were dismissed. While we did note some slight differences in the sanctions imposed on foreign-trained and domestic-trained physicians, these actions pertained to a very small number of cases. We found no compelling indicators of differential treatment between foreign-trained and domestic-trained physicians.

Complaint Review and Dismissal

The Complaint May Be Dismissed at Several Points in the Process

The complaint process includes numerous steps before reaching the Board of Medicine. There are several points at which a complaint may be dismissed, including: after review for legal sufficiency; at the conclusion of the fact-finding investigation; after review by the Probable Cause Panel; and after review by the Board.

Most Complaints Are Dismissed Because They Are Not Legally Sufficient

All complaints against physicians are received and recorded by the Office of Consumer Services. Consumer Services staff determine if each complaint is legally sufficient, which means that if the alleged facts were shown to be true, they would constitute a violation of Chs. 455 or 458, F.S., or Ch. 59R-8, F.A.C. Complaints that are not legally sufficient are dismissed. Most complaints are dismissed at this point. During 1994, a total of 3,520 complaints were dismissed; 1,933 of these complaints were dismissed because they were not legally sufficient.¹⁴

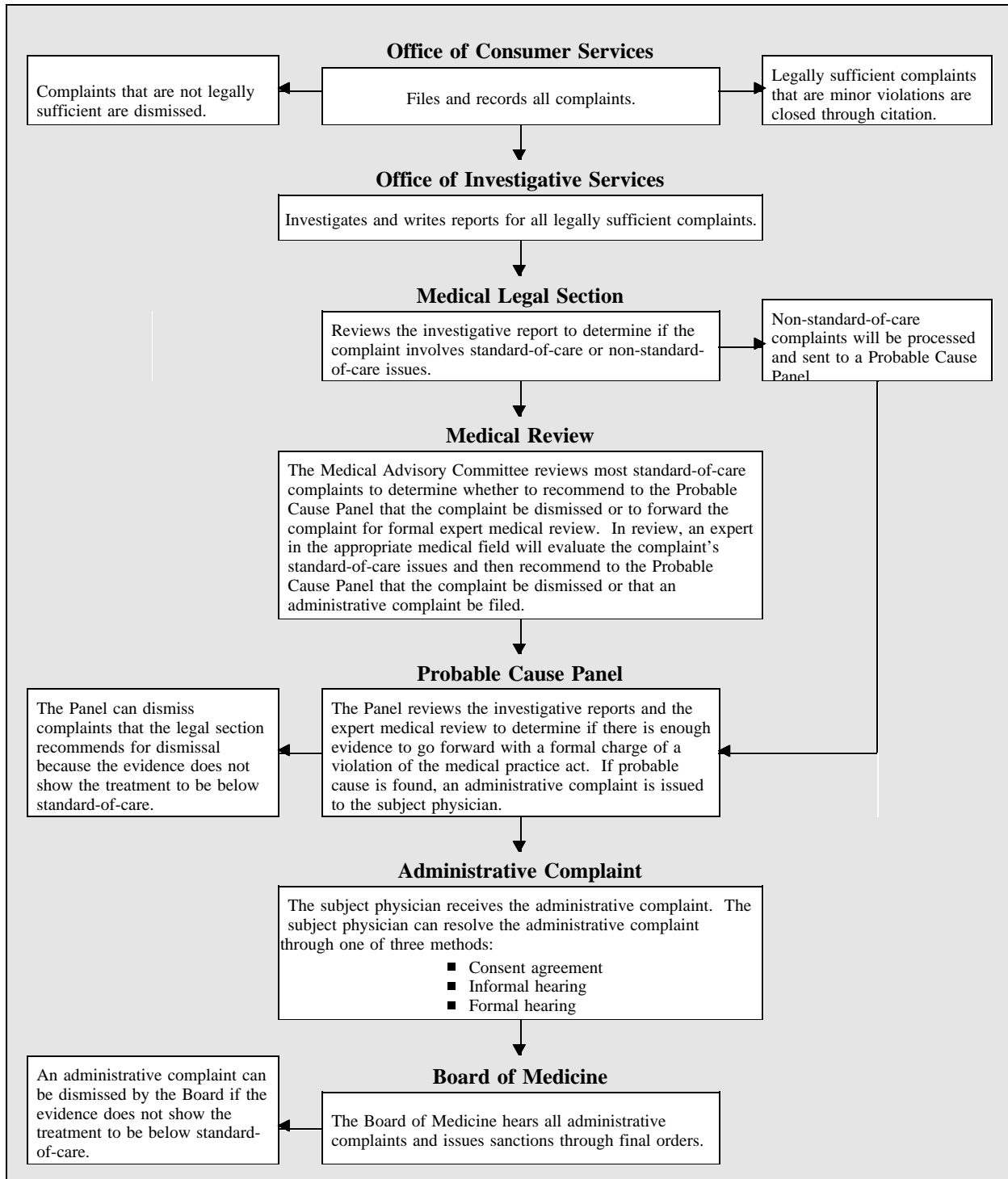
If Office staff determine that a complaint is legally sufficient, it is sent to a DBPR regional field office for a formal investigation. Field office staff conduct interviews and review files to try to determine if a violation has occurred. The subject physician's medical school and date of graduation may be obtained in this process but are not required information. The investigative report is forwarded to the Medical Legal Section. In 1994 the average time from the filing of a complaint until the investigation was complete was approximately five months.

The Medical Legal Section reviews each investigative report to determine if it is complete and whether the complaint concerns a non-standard-of-care or a standard-of-care issue. Non-standard-of-care issues, such as sexual misconduct or practicing without a license, go directly to a Probable Cause Panel.¹⁵ (See Exhibit 7.) Standard-of-care issues, such as gross or repeated malpractice, go to a group of medical consultants for review.

¹⁴ The number of complaints processed against physicians in each step of the complaint process do not add up to the total complaints or physicians because all complaints received in 1994 may not have been investigated or resolved in the same year.

¹⁵ The Board of Medicine established two Probable Cause Panels, each consisting of three current or prior Board of Medicine members, who determine whether there is sufficient legal and medical evidence to proceed with the case.

Exhibit 7: The Medical Complaint Process



Source: Agency for Health Care Administration.

The Medical Advisory Committee and the formal expert medical reviewers are licensed physicians independent of DBPR, AHCA, and the Board.¹⁶ The Committee's task is to review the investigative reports and provide an objective, independent analysis of the medical facts. Medical Advisory Committee members review standard-of-care complaints for the Medical Legal Section to determine whether the complaint should be dismissed or formal expert medical review is warranted. Complaints requiring formal expert medical review are sent to a licensed physician who is an expert in the field of medicine appropriate to the complaint. The expert reviews the information in the case file and provides a formal written opinion concerning whether the physician provided appropriate treatment. After a case has been reviewed by medical experts, the Medical Legal Section presents it to a Probable Cause Panel, along with a recommendation to dismiss the case or proceed to file an administrative complaint.

**A Third of Complaints
Are Dismissed Because
the Treatment Met
Standard of Care**

Three Board members acting as a Probable Cause Panel review the investigative report and formal expert opinion to evaluate the Medical Legal Section's recommendation to dismiss the complaint or proceed with a case. This is the second most common point for complaints to be dismissed: in 1994, 1,478 complaints against 1,342 physicians were dismissed because the evidence did not indicate that the treatment provided was below standard-of-care. In 1994, average time to process a complaint from initiation of the complaint to probable cause determination was approximately 11 months.

If the Probable Cause Panel believes there has been some wrongdoing, the panel issues formal charges against the physician in a document called an administrative complaint. The physician is informed of all charges. Following the probable cause determination, the case is considered by the full Board.

The Board may dismiss complaints at this stage of the process if the members feel: the medical issues involved have been misinterpreted; the complaint lacks sufficient

¹⁶ All the members of the Medical Advisory Committee are volunteers, as are many of the expert medical reviewers. The Committee was formed in 1991 to alleviate the workload and reduce the backlog of cases for the limited number of formal expert reviewers. In 1994, the Medical Advisory Committee and the volunteer expert witness programs saved the state \$392,695 in formal expert review fees.

evidence; or the administrative hearing officer recommends dismissal. One hundred nine complaints were dismissed against 89 physicians in 1994 after a probable cause determination was made.

Although the Majority of Complaints Are Dismissed, Florida Disciplined the Highest Number of Physicians in the Nation

According to the Department, a total of 3,520 complaints against 2,855 physicians were dismissed by the Department in 1994.¹⁷ While this sounds like a high rate of dismissals, national statistics show that Florida's rate of disciplinary actions is high when compared to that of other states. The Federation of State Medical Boards reported that the Florida Board of Medicine imposed more disciplinary actions against physicians in 1994 than any other state. Florida reported actions against the highest number of practitioners (380), followed by New York (309) and California (281). The Federation also generates a composite index that combines the number of disciplinary actions taken with their severity. According to this composite index, Florida ranked second in the nation in disciplinary actions.

Cases Closed Through Final Order

Most Cases Are Resolved by Consent Agreement

Administrative complaints may be resolved in one of three ways: consent agreement, informal hearing, or formal hearing. In consent agreements, the physician and the Medical Legal Section negotiate a penalty. The Board reviews the agreement and may elect to dismiss the complaint, accept the consent agreement, or alter the sanctions. If the sanctions are altered, the physician must agree to the new sanctions. Of the 199 cases resolved through final orders in 1994, the majority (144 or 72%) were settled by consent agreements. Seventy-seven or 71% of the domestic-trained, and 67 or 74% of foreign-trained physicians elected consent agreements as a means of resolution.

In an informal hearing, the physician appears before the Board to explain the circumstances surrounding the complaint. In 1994, 22 of the 199 cases were resolved by

¹⁷ The number of complaints processed against physicians in each step of the complaint process do not add up to the total complaints or physicians because all complaints received in 1994 may not have been investigated or resolved in the same year.

informal hearings. Sixteen domestic-trained physicians and six foreign-trained physicians chose this form of resolution.

Physicians who choose a formal hearing go before a Division of Administrative Hearing (DOAH) hearing officer to dispute the facts alleged by the Medical Legal Section or the medical experts. The hearing officer acts like a judge, weighing all the evidence and then writing a recommended order. The Board of Medicine reviews the DOAH recommended order, including findings of fact, conclusions of law, interpretation of administrative rules, and recommended sanctions. The Board generally accepts the hearing officer's findings of fact and legal interpretation, but sometimes alters the recommended sanctions. As previously described, the Board members may also dismiss the complaint. At the conclusion of the administrative hearing process the Board of Medicine issues a Final Order that reiterates the charges against the subject physician and specifies the sanctions. The formal hearing process was elected by 20 sanctioned physicians: 8 domestic-trained and 12 foreign-trained physicians.

The Rates of Formal and Informal Hearings Differ for Foreign-Trained and Domestic-Trained Physicians

As shown in Exhibit 8, a comparison of final orders issued to foreign-trained versus domestic-trained physicians indicates that while the incidence of consent agreements and voluntary relinquishments is similar in both groups, the occurrence of formal and informal hearings is inverted. Twice as many domestic-trained physicians choose informal hearing as foreign-trained physicians, yet for formal hearing the percentages are reversed. While this trend pertains to only a small number of cases, it may indicate that foreign-trained physicians are more inclined to challenge the facts as alleged by the Medical Legal Section than are domestic-trained physicians, who may be more inclined to accept the facts but explain their interpretations of the surrounding circumstances before the Board in an informal hearing. This decision by the charged physician occurs after probable cause is found, but before the case is brought to the full Board.

Exhibit 8: Final Orders Issued in 1994

Method of Resolving the Final Order	Domestic-Trained Physicians		Foreign-Trained Physicians		Totals	
	Number	Percent	Number	Percent	Number	Percent
Consent Agreement	77	71%	67	74%	144	72%
Informal Hearing	16	15%	6	7%	22	11%
Formal Hearing	8	7%	12	13%	20	10%
Voluntary Relinquishment	8	7%	5	6%	13	7%
	<u>109</u>	<u>100%</u>	<u>90</u>	<u>100%</u>	<u>199</u>	<u>100%</u>

Source: Board of Medicine, Subject Matter Index Volume V, January 1992-February 1995, Legal/Medical Section, Agency for Health Care Administration. Data compiled by the Office of Program Policy Analysis and Government Accountability.

Sanctions

All Board Sanctions Were Within Guidelines

The Board of Medicine is responsible for administering sanctions against physicians found in violation of the standards defined in s. 458.331, F.S., and Ch. 59R-8, F.A.C. Chapter 59R-8, F.A.C., lists the violations and sanction guidelines for each. The Board is required to follow these guidelines when administering sanctions for formal and informal hearings but not for consent agreements. We reviewed the final orders of all formal and informal hearings for 1994 and determined that the Board administered sanctions within the guidelines. However, these guidelines are very broad and give the Board a great deal of discretion.

The Board Uses Additional Criteria to Determine Sanctions

The Board uses criteria based on each member's expertise and personal judgment when determining the severity of sanctions to administer. Through interviews we identified a set of core factors used by individual Board members. These unwritten criteria include: whether physicians have specialty board certification or training in their area of practice; the degree of harm done to the patient; the potential threat the physician poses to public health; and whether the physician has a pattern of medical violations. The attitudes of the physicians appearing before the Board are also taken into consideration: do the physicians accept responsibility for their actions or are they arrogant and

blame others. Some Board members perceived that educational background was also used as a criteria; however, in interviews, Board members said they did not consider whether the subject physician was foreign-trained or domestic-trained.

One way to evaluate the consistency of Board disciplinary decisions is to compare cases of similar violations to determine if the same sanctions were imposed. We were unable to use this type of analysis for several reasons. First, Board members and staff indicated that each case has distinguishing features; thus, we were unable to obtain anecdotal information about cases that were nearly the same. Second, there is no system for tracking cases by similarity of violation. Final order records list the types of violations charged in each case, but a list of physicians being charged with standard of care violations, for example, would not indicate the number of violations or their severity. Thus, there is no way to readily compare the severity of the incident to the penalty imposed. Third, as indicated in the list of criteria used by the Board to evaluate a case, the attitude of the charged physician is an important factor. Some Board members indicated physicians who blame others for their mistakes are considered less likely to show sufficient caution or responsibility in the future; therefore, these physicians are considered a greater threat to public safety. However, minutes of Board meetings only reflect the legal decisions of the Board, so information on Board deliberations and physicians' attitudes is also not readily available. Because of these limitations in making case-by-case comparisons, we reviewed the aggregate decisions the Board made in imposing sanctions in those cases resolved in 1994.

Sanctions that are applied against physicians by the Board fall into four categories: revocation; suspension; probation, limitations, and obligations; and fines and reprimand. We analyzed the sanctions imposed by final orders to determine if they were applied similarly to foreign-trained and domestic-trained physicians. In most cases they were. To help interpret the small differences we found in some areas, we reviewed the way the complaints were resolved, the origin of the complaints, and the composition of the Board.

Most Cases Are Treated Similarly by the Board

Our analysis of the 199 cases resolved in 1994 by final order indicates that in most areas foreign-trained and domestic-trained physicians are treated similarly by the Board. Revocation, the most severe sanction because it is a permanent loss of license, occurred at approximately the same rate for foreign-trained and domestic-trained physicians. Similarly, voluntary relinquishment—when a physician voluntarily and permanently gives up a medical license without being ordered to do so by the Board—occurred at close to the same rates for foreign-trained and domestic-trained physicians.

Foreign-Trained Physicians Received Suspensions at a Slightly Higher Frequency, While More Domestic-Trained Physicians Were Placed on Probation

However, foreign-trained physicians received suspensions, a limited loss of license, at a slightly higher frequency than domestic-trained physicians. In 1994, 28 physician licenses were suspended: 16 were foreign-trained and 12 were domestic-trained physicians. More domestic-trained physicians received less severe sanctions: probation, limitations and obligations were imposed on 73 domestic-trained physicians compared to 51 foreign-trained physicians. The frequencies of these distributions are shown in Exhibit 9. Because these numbers are relatively small, any trend analysis should be viewed with caution: even small changes in the population could cause large shifts in the percentages, thereby affecting any perceived trends.

Exhibit 9: Sanctions Imposed on Domestic-Trained (DT) and Foreign-Trained (FT) Physicians in 1994

Sanction Category	Total Sanctions	Physicians Education		Consent Agreement		Informal Hearing		Formal Hearing	
		DT	FT	DT	FT	DT	FT	DT	FT
Revocation	6	3	3	0	0	2	1	1	2
Suspension	28	12	16	6	8	3	3	3	5
Probation, Limitation, Obligation	124	73	51	61	46	8	2	4	3
Fines and Others	27	13	14	10	12	3	0	0	2
Voluntary Relinquishment	14	8	6 ¹	0	1	0	0	0	0
Total	<u>199</u>	<u>109</u>	<u>90</u>	<u>77</u>	<u>67</u>	<u>16</u>	<u>6</u>	<u>8</u>	<u>12</u>

¹ Most voluntary relinquishments occur prior to Board actions.

Source: Board of Medicine, Subject Matter Index Volume V, January 1992-February 1995, Legal/Medical Section, Agency for Health Care Administration. Data compiled by the Office of Program Policy Analysis and Government Accountability.

The majority of physicians, both those suspended and those placed on probation, resolved the complaints against them through consent agreements. Consent agreements are settlements developed by the Medical Legal Section and the subject physician. Fourteen of the 28 physicians receiving suspensions, and 107 of the 124 physicians receiving probation, resolved their sanctions in consent agreements. Therefore, 80% of the suspension and probation sentences were agreed to by the subject physicians. Physicians who are not satisfied with the sanctions imposed on them may appeal through administrative or judicial procedures. In 1994 there was only one request for Board reconsideration of a final order and one court order that directed the Board to review the disposition of a complaint.

Foreign-Trained and Domestic-Trained Physicians Were Fined at Approximately the Same Frequency

Fines are one of the least severe sanctions that can be administered because they do not inhibit the physician's opportunity to practice medicine. The Board often considers the investigative costs associated with the complaint when determining fines. The number of physicians receiving only fines for their sanctions occurred at approximately the same frequency for foreign-trained and domestic-trained physicians. For all fines administered, including fines administered in conjunction with other sanction categories,

domestic-trained physicians received fines more frequently than foreign-trained physicians. For all fines administered by the Board, the median fine was the same for both foreign-trained and domestic-trained physicians, \$2,500. The average fine for foreign-trained physicians was \$3,929 compared to \$3,221 for domestic-trained physicians; this is the result of an unusually high fine of \$48,000 assessed against one foreign-trained physician.

DBPR Files More Complaints Against Domestic-Trained Physicians

We identified the source of the complaints that resulted in final orders. As shown in Exhibit 10, individuals were the largest source of complaints against physicians, filing 44 complaints against domestic-trained and 41 complaints against foreign-trained physicians. DBPR was the second largest source of complaints, filing 35 complaints against domestic-trained and 22 complaints against foreign-trained physicians. Department staff may file a complaint against a physician if an anonymous tip is received, staff becomes aware of a violation, or evidence obtained in the course of an investigation indicates other violations or the involvement of other physicians.

Exhibit 10: Source of Complaints Against Domestic-Trained and Foreign-Trained Physicians Receiving Final Orders in 1994

Source of the Complaint	Number of Complaints		
	Domestic-Trained Physicians (n=94)	Foreign-Trained Physicians (n=79)	Totals (n=173)
Individuals	44	41	85
Insurance Companies	12	13	25
Generated by the Department of Business and Professional Regulation	35	22	57
Other Agencies	9	7	16
Health Facilities	18	15	33
Number of Complaints ¹	<u>118</u>	<u>98</u>	<u>216</u>

¹ It is possible there could be multiple complaints per physician. There were 173 physicians with 216 complaints filed against them. The source of complaints against 26 physicians could not be determined.

Source: Department of Business and Professional Regulation data compiled by the Office of Program Policy Analysis and Government Accountability.

Conclusions and Recommendations

Our review of the Board of Medicine complaint and disciplinary process indicates that most complaints are dismissed. The dismissal rates for foreign-trained and domestic-trained physicians were very similar: 92% and

94%, respectively. The Board took action against less than 1% of all foreign-trained and against less than 1% of all domestic-trained active licensed physicians in Florida. Most complaints that resulted in final orders were resolved by consent agreements; there was some difference in the method by which the remaining complaints were resolved. Domestic-trained physicians tended to choose informal hearings more often, while formal hearings were chosen more by foreign-trained physicians. In all final orders, the physician, and not the Board, elects the method of resolution. There was also a small difference in the administration of some sanctions. Foreign-trained physicians received suspensions more frequently than domestic-trained physicians, and domestic-trained physicians received probation more frequently. However, 80% of these suspension and probation sanctions were administered through consent agreements approved by the physician. All other sanctions were applied similarly. And, only one case was successfully appealed from the Board to the courts. Based on these facts, we do not detect any compelling indicators of differential treatment between foreign-trained and domestic-trained physicians by the Board of Medicine.

To avoid the perception or appearance of differential treatment towards foreign-trained physicians in the future, we recommend that the Board monitor the imposition of suspension and probation sanctions to ensure that they are being applied in a fair and consistent way. Further, we recommend the Board revise the disciplinary case cover sheet to exclude information regarding where the physician attended medical school.

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Appendix A

Response From the Agency for Health Care Administration

In accordance with the provisions of s. 11.45(7)(d), F.S., a list of preliminary and tentative review findings was submitted to the Director of the Agency for Health Care Administration for his review and response.

The Director's written response is reprinted herein beginning on page 44.

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

November 28, 1995

Mr. James L. Carpenter
Interim Director
Office of Program Policy Analysis
and Government Accountability
Post Office Box 1735
Tallahassee, Florida 32302

Dear Mr. Carpenter:

Thank you for giving the Agency for Health Care Administration (AHCA) an opportunity to respond to the preliminary report regarding your review of the "Licensing and Disciplinary Practices of the Florida Board of Medicine."

We appreciate the review team's thoroughness in investigating all aspects of the issues involved in a very complex program area. It is evident from reading the report that the review team understood the importance of their assignment, and took the time to investigate each primary issue and related issues.

Recommendation #1: "We recommend that the Legislature approve the Board of Medicine's request and revise the residency requirement to two years".

Agency Response: The Agency and the Board agree with this recommendation. Legislation has been submitted from the Agency and the Board for the past two years, and is again included in our 1996 Medical Quality Assurance proposal.

Recommendation #2: "We recommend that the Legislature reject requests for special licenses and use the United States Medical Licensing Examination (USMLE) certification process for all foreign-trained and domestic-trained physicians".

Agency Response: In view of the independent finding that thirty-four percent of Florida physicians are foreign-trained, the Agency and the Board agree that special avenues for licensure are not necessary. Failure-rate problems, to some extent,

Mr. James Carpenter
November 28, 1995
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appear to be related to foreign exam candidates not fully understanding the expectations of them during the exam. In view of this, the Agency strongly recommends that the Legislature authorize Florida's three medical schools (University of Florida, University of South Florida, and University of Miami) to develop a preparatory course for this group of individuals. The course would focus on the Educational Commission for Foreign Medical Graduates (ECFMG) Certification and state licensing exam preparation, thereby maximizing their opportunity to understand what they are being graded on.

Recommendation #3: "We recommend that the board revise the disciplinary case cover sheet to exclude information regarding where the physician attended medical school".

Agency Response: The Agency and the Board agree with this recommendation, and will immediately change the cover sheet to exclude information regarding where the physician attended medical school.

Again, thank you for giving us the opportunity to respond to this report.

Sincerely,

Douglas M. Cook
Director

GCH/jeh