

# **Nevada State Board of Osteopathic Medicine**

## **Disciplinary Matrix**

### ***I. Philosophy***

The Nevada State Board of Osteopathic Medicine (“NSBOM” or the “Board”) is a regulatory body of the State of Nevada, governed by Chapter 633 of the Nevada Revised Statutes (“NRS”) and Nevada Administrative Code (“NAC”). As such, the NSBOM is charged with regulating the practice of osteopathic medicine in the State of Nevada which necessarily includes the imposition of discipline upon licensees that violate the statutes and regulations which govern it. As the NSBOM’S NRS and NAC make clear, infractions of its statutes and regulations touch on issues both large and small.

Yet, irrespective of the type of infraction, it is the priority of this Board to ensure that disciplinary decisions are made consistently, objectively and based upon clearly understood criteria. In order to promote continued confidence and trust in the Board’s disciplinary processes, the NSBOM is proceeding with these objectives in mind to ensure transparency, fairness to licensees, consumers and members of the public.

In creating this matrix, the Board created a glossary for commonly understood definitions of terms that are used differently in various states. Given the advent of osteopathic practice licensure compacts, telehealth and other innovations, NSBOM’S licensees are already experiencing increased mobility between jurisdictions. Thus, this matrix was created in such a manner as to get to the essence of various possible infractions under NAC and NRS 633, so that other, subsequently reviewing jurisdictions can easily understand the facts and legal circumstances of disciplinary actions that NSBOM may bring in the future.

To be clear, this matrix is intended to create guidelines for the NSBOM and its Investigating Board Member(s) (“IBM”) to follow in their evaluation and assessment of a disciplinary matter. These guidelines are simply suggested resolutions for NSBOM disciplinary matters, but may be modified by an IBM to fit the facts and circumstances of each particular case.

### ***II. Using The Matrix***

The NSBOM Matrix (“Matrix”) is basically a chart containing a linear progression, where the severity of an action increases as one moves from top to bottom and left to right. Along the left edge of the Matrix, are the categories in order of severity that define each row, while the top edge contains the infractions that define each column.

The left axis of the Matrix begins in the upper left with the least severe infractions involving an “offense of failing to act”, down to the bottom left with the most severe infractions involving “an offense or action with implications of licensee action that potentially extend beyond

the limits of the licensee’s workplace”. When presented with an infraction, the IBM assigned to the matter will select the appropriate category for that infraction from the continuum spanning upper left to lower left, as described above.

The top axis of the Matrix contains the factors to consider when an IBM is asked to remediate an infraction or impose discipline in one of three categories – Type I, Type II and Type III. Within each Type are two subcategories – “A” and “B”, representing Isolated (“A”) or Multiple (“B”) instances of conduct, representing so-called one-time or repeat offenders.

|   | Type I                                    |          | Type II                                    |          | Type III                                  |          |
|---|---|----------|--|----------|---|----------|
|   | Isolated                                  | Multiple | Isolated                                   | Multiple | Isolated                                  | Multiple |
| An offense of failing to act  | A   | B        | 1 & A                                      | 2 & A    | 2 & A                                     | 2 & B    |
| An offense of action – potential for harm is expected to be primarily financial or ethical  | 1 & A                                     | 2 & A    | 2 & B                                      | 3 & B    | 3 & B                                     | 3 & C    |
| An offense of action – potential for harm is expected to be related to clinical issue   | 1 & B                                     | 2 & B    | 2 & C                                      | 3 & C    | 3 & C                                     | 4 & C    |
| An offense of action – implications or consequences of licensee action potentially extend beyond the limits of licensee’s workplace | 2 & C                                     | 2 & C    | 3 & B                                      | 3 & C    | 3 & C                                     | 4 & C    |
| Recommended range of fine (or fines) to be imposed  | <b>\$1 - \$1,000 for Type I violation</b> |          | <b>\$1 - \$3,000 for Type II violation</b> |          | <b>1 - \$5,000 for Type III violation</b> |          |

### **III. Notes**

The NSBOM’S disciplinary authority may be found in NRS 633.651, which states as follows:

1. If the Board finds a person guilty in a disciplinary proceeding, it shall by order take one or more of the following actions:

- (a) Place the person on probation for a specified period or until further order of the Board.
- (b) Administer to the person a public reprimand.
- (c) Limit the practice of the person to, or by the exclusion of, one or more specified branches of osteopathic medicine.
- (d) Suspend the license of the person to practice osteopathic medicine for a specified period or until further order of the Board.
- (e) Revoke the license of the person to practice osteopathic medicine.
- (f) Impose a fine not to exceed \$5,000 for each violation.
- (g) Require supervision of the practice of the person.
- (h) Require the person to perform community service without compensation.
- (i) Require the person to complete any training or educational requirements specified by the Board.
- (j) Require the person to participate in a program to correct alcohol or drug dependence or any other impairment.

The order of the Board may contain any other terms, provisions or conditions as the Board deems proper and which are not inconsistent with law.

2. The Board shall not administer a private reprimand.

3. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.

Hence, the statutory limit as to the fine the NSBOM may impose is \$5,000 per violation, with multiple violations carrying the potential for multiple fines as dictated in this provision. It is the intention of the NSBOM to have each IBM assigned to a disciplinary matter consider all pertinent information in determining whether a fine is (or fines are) an appropriate outcome and the amount of such a fine (or fines). Because Type I, II and III, as defined below, address increasingly severe violations, the proposed range for such a fine (or fines) increases among these three Type(s), as detailed in the Matrix. To be clear, irrespective of which Type is applied to a given violation, the cost of investigation and administration of violations may be assessed in any /all cases.

In terms of the composition of the Matrix itself, the top axis contains the factors to consider when an IBM is asked to remediate an infraction or impose discipline in one of three categories – Type I, Type II and Type III. Within each Type are two subcategories – “A” and “B”,

representing Isolated (“A”) or Multiple (B”) instances of conduct, representing so-called one-time or repeat offenders.

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Type(s) I, II and III are defined as follows:

**Type I: Factors to Consider (all may not apply)**

- Unintentional error
- Licensee believes they were acting in patient’s best interest (no self-serving intent)
- Honest mistake
- Safety of others not compromised
- Little / no intended risk

**Type II: Factors to Consider (all may not apply)**

- Poor judgment demonstrated
- Licensee acting in own best interest
- Conscious awareness their actions were improper
- Faulty decision-making is clear
- Potentially unsafe choice
- Licensee believed risk to be insignificant or justified

**Type III: Factors to Consider (all may not apply)**

- Harmful intent with or without direct harm to patient including, but not limited to: financial, emotional, physical harm.
- Licensee acted with recklessness
- Licensee disregarded interests of patient or others.
- Dangerous / unsafe choice
- Licensee made decision with conscious disregard for substantial and unjustifiable risk to patient, others or the licensee themselves.

Once the appropriate cell in the matrix is identified through consideration of the factors referenced above, that cell will direct the IBM to a letter and an number representing the appropriate class of punitive and remedial actions the NSBOM should consider. The remedial and punitive actions are divided into classes with a range of options within each class. For ease of reference, remedial steps are represented by letters and punitive actions are represented by numbers in the table below.

***Please note that while the cells in the table below contain multiple remedial actions, the IBM is not required to impose each of the actions contained within a given cell. As with any NSBOM disciplinary matter, it falls to the discretion of the IBM to craft an appropriate remedy***

***for resolution of the case.*** For further discussion, please see Appendix A (Applicability of Matrix to Licensure Applicants) and Appendix B (Aggravating and Mitigating Factors).

| <b>Punitive Actions</b>                                | <b>Remedial Actions</b>                                    |
|--|--|
| Class 1: Civil penalty, censure                        | Class A: Advisory letter, continuing competence activity   |
| Class 2: Civil penalty, censure, denial of license     | Class B: Periodic monitoring, supervised clinical practice |
| Class 3: Civil penalty; restricted license, revocation | Class C: Continuing competence activity, treatment program |
| Class 4: Civil penalty; denial of license, revocation  |  |

#### ***IV. Properly Navigating the Matrix***

To properly use the Matrix to analyze the appropriate outcome for a Board disciplinary matter, it is recommended that the following questions be posed:

1. What are the grounds for this disciplinary action? The matter will have been placed at the appropriate spot along the left axis of the Matrix.
2. Is this an isolated incident or multiple events? Is this a single, one-time event, a pattern of behavior over time, or has this licensee been disciplined for the same infraction in the past?
3. What is the infraction type? (Type I, II or III on the top axis of the Matrix) This determination could lead to some debate and discussion, and is, perhaps, the most difficult step of the process. To make this determination, it is appropriate to consider the risk assumed on behalf of the patient, the risk taken, whether safety was compromised or are there other pertinent factors?
4. Once Questions 1, 2 and 3 are determined, the appropriate cell can be identified for this disciplinary action within the Matrix. The cell which lines up with these three variables will now provide the range of options the Board may impose. This prescription will include the punitive action classification, the remedial action classification, or both.
5. Which remedial action and/or punitive sanction is appropriate, based upon the table of potential actions?

6. Are there any mitigating or aggravating factors that would decrease or increase the punishment within the prescribed class?
7. Assuming there are such factors, how should the remedial action and/or punitive sanction be modified?
8. Since discipline is cumulative, the process of steps 1-7 should be repeated for any additional grounds for disciplinary action.
9. Once all violations are added together, what is the final recommended remedial action and/or punitive sanction?
10. Once the final recommended remedial action and/or punitive sanction is determined, what is the appropriate Basis for Action code for reporting to the National Practitioner Data Bank (assuming the matter is to be reported)?

## **APPENDIX A: APPLICABILITY OF MATRIX TO LICENSURE APPLICANTS**

The penalties specified in the Disciplinary Matrix are generally tailored to apply to violations of the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code (NAC), including, but not limited to, those set forth in NRS Chapter 633 and NAC 633, by licensees. When applicants for licensure are found to have committed like violations, the appropriate actions will be formulated in terms of either grant, denial, or rejection of the application. A grant of a license may be accompanied by any condition, limitation, restriction, suspension, requirements for reinstatement, probation, and/or reprimand, as appropriate, and should be proportionate to penalties imposed for licensees.

## **APPENDIX B: AGGRAVATING AND MITIGATING FACTORS**

After a violation has been established, the Board may consider aggravating and mitigating circumstances in deciding what penalty to impose. If the Board deems such circumstances sufficient to justify a departure from disciplinary matrix, they should be specified during the Board's deliberations.

### **AGGRAVATION**

Aggravation or aggravating circumstances are any considerations or factors which might justify an increase in the degree of discipline to be imposed. Aggravating factors may include, but are not limited to:

- (a) Prior disciplinary actions
- (b) Dishonest or selfish motive
- (c) A pattern of misconduct
- (d) Multiple violations
- (e) Submission of false evidence, false statements, or other deceptive practices during the disciplinary process
- (f) Refusal to acknowledge wrongful nature of conduct
- (g) Adverse impact of misconduct on others
- (h) Vulnerability of victim
- (i) Willful or reckless misconduct
- (j) Use/abuse of position of trust, or of licensee status, to accomplish the deception, theft, boundaries violation, or other misconduct
- (k) Where an individual has a duty to disclose information to the Board, the extent of delay in disclosing all or part of the information, including the failure to self-report relapse immediately to the Board as required
- (l) Failure to correct misconduct after recognizing the existence of the problem/violation

### **MITIGATION**

Mitigation or mitigating circumstances are any considerations or factors which might justify a reduction in the degree of discipline to be imposed. Mitigating factors may include, but are not limited to:

- (a) Absence of a prior disciplinary record
- (b) Absence of a dishonest or selfish motive
- (c) Isolated incident, unlikely to recur
- (d) Full and free disclosure to Board, when done in a timely manner (such as before discovery is imminent)
- (e) Physical or mental disability or impairment

(NOTE: IT IS THE BOARD'S STATED POLICY THAT IMPAIRMENT SHALL NOT EXCUSE ACTS WHICH RESULT IN CONVICTION OR WHICH POTENTIALLY HAVE AN ADVERSE IMPACT ON OTHER INDIVIDUALS.)

- (f) Interim rehabilitation or remedial measures
- (g) Remorse
- (h) Absence of adverse impact of misconduct on others
- (i) Remoteness of misconduct, to the extent that the passage of time between the misconduct and the Board's determination of the sanction is not attributable to the respondent's delay, evasion, or other acts/omissions
- (j) Absence of willful or reckless misconduct
- (k) Prompt correction of misconduct/problem after recognizing its existence.