

and after an opportunity for public comment.

(b) *Reporting by the Board of Medical Examiners to the National Practitioner Data Bank.* Each Board must report, in accordance with §§ 60.4 and 60.5, the information reported to it by a health care entity and any known instances of a health care entity's failure to report information as required under paragraph (a)(1) of this section. In addition, each Board must simultaneously report this information to the appropriate State licensing board in the State in which the health care entity is located, if the Board is not such licensing board.

(c) *Sanctions—(1) Health care entities.* If the Secretary has reason to believe that a health care entity has substantially failed to report information in accordance with § 60.9, the Secretary will conduct an investigation. If the investigation shows that the health care entity has not complied with § 60.9, the Secretary will provide the entity with a written notice describing the non-compliance, giving the health care entity an opportunity to correct the non-compliance, and stating that the entity may request, within 30 days after receipt of such notice, a hearing with respect to the noncompliance. The request for a hearing must contain a statement of the material factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC, metropolitan area. The Secretary will deny a hearing if:

- (i) The request for a hearing is untimely,
- (ii) The health care entity does not provide a statement of material factual issues in dispute, or
- (iii) The statement of factual issues in dispute is frivolous or inconsequential.

In the event that the Secretary denies a hearing, the Secretary will send a written denial to the health care entity setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing the entity is found to be in noncompliance, the Secretary will publish the name of the health care entity in the FEDERAL REGISTER. In such case,

the immunity protections provided under section 411(a) of the Act will not apply to the health care entity for professional review activities that occur during the 3-year period beginning 30 days after the date of publication of the entity's name in the FEDERAL REGISTER.

(2) *Board of Medical Examiners.* If, after notice of noncompliance and providing opportunity to correct non-compliance, the Secretary determines that a Board has failed to report information in accordance with paragraph (b) of this section, the Secretary will designate another qualified entity for the reporting of this information.

(Approved by the Office of Management and Budget under control number 0915-0126)

[54 FR 42730, Oct. 17, 1989, as amended at 59 FR 61555, Dec. 1, 1994]

### Subpart C—Disclosure of Information by the National Practitioner Data Bank

#### § 60.10 Information which hospitals must request from the National Practitioner Data Bank.

(a) *When information must be requested.* Each hospital, either directly or through an authorized agent, must request information from the Data Bank concerning a physician, dentist or other health care practitioner as follows:

- (1) At the time a physician, dentist or other health care practitioner applies for a position on its medical staff (courtesy or otherwise), or for clinical privileges at the hospital; and
- (2) Every 2 years concerning any physician, dentist, or other health care practitioner who is on its medical staff (courtesy or otherwise), or has clinical privileges at the hospital.

(b) *Failure to request information.* Any hospital which does not request the information as required in paragraph (a) of this section is presumed to have knowledge of any information reported to the Data Bank concerning this physician, dentist or other health care practitioner.

(c) *Reliance on the obtained information.* Each hospital may rely upon the information provided by the Data Bank to the hospital. A hospital shall not be

## § 60.11

held liable for this reliance unless the hospital has knowledge that the information provided was false.

(Approved by the Office of Management and Budget under control number 0915-0126)

### **§ 60.11 Requesting information from the National Practitioner Data Bank.**

(a) *Who may request information and what information may be available.* Information in the Data Bank will be available, upon request, to the persons or entities, or their authorized agents, as described below:

(1) A hospital that requests information concerning a physician, dentist or other health care practitioner who is on its medical staff (courtesy or otherwise) or has clinical privileges at the hospital,

(2) A physician, dentist, or other health care practitioner who requests information concerning himself or herself,

(3) Boards of Medical Examiners or other State licensing boards,

(4) Health care entities which have entered or may be entering employment or affiliation relationships with a physician, dentist or other health care practitioner, or to which the physician, dentist or other health care practitioner has applied for clinical privileges or appointment to the medical staff,

(5) An attorney, or individual representing himself or herself, who has filed a medical malpractice action or claim in a State or Federal court or other adjudicative body against a hospital, and who requests information regarding a specific physician, dentist, or other health care practitioner who is also named in the action or claim. Provided, that this information will be disclosed only upon the submission of evidence that the hospital failed to request information from the Data Bank as required by § 60.10(a), and may be used solely with respect to litigation resulting from the action or claim against the hospital,<sup>11</sup>(6) A health care entity with respect to professional review activity, and

(7) A person or entity who requests information in a form which does not permit the identification of any particular health care entity, physician,

## 45 CFR Subtitle A (10-1-06 Edition)

dentist, or other health care practitioner.

(b) *Procedures for obtaining National Practitioner Data Bank information.* Persons and entities may obtain information from the Data Bank by submitting a request in such form and manner as the Secretary may prescribe. These requests are subject to fees as described in § 60.12.

[54 FR 42730, Oct. 17, 1989; 54 FR 43890, Oct. 27, 1989]

### **§ 60.12 Fees applicable to requests for information.**

(a) *Policy on Fees.* The fees described in this section apply to all requests for information from the Data Bank. These fees are authorized by section 427(b)(4) of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11137). They reflect the costs of processing requests for disclosure and of providing such information. The actual fees will be announced by the Secretary in periodic notices in the FEDERAL REGISTER.

(b) *Criteria for determining the fee.* The amount of each fee will be determined based on the following criteria:

(1) Use of electronic data processing equipment to obtain information—the actual cost for the service, including computer search time, runs, printouts, and time of computer programmers and operators, or other employees,

(2) Photocopying or other forms of reproduction, such as magnetic tapes—actual cost of the operator's time, plus the cost of the machine time and the materials used,

(3) Postage—actual cost, and

(4) Sending information by special methods requested by the applicant, such as express mail or electronic transfer—the actual cost of the special service.

(c) *Assessing and collecting fees.* The Secretary will announce through notice in the FEDERAL REGISTER from time to time the methods of payment of Data Bank fees. In determining these methods, the Secretary will consider efficiency, effectiveness, and convenience for the Data Bank users and the Department. Methods may include: