

**PART 46—POLICY REGARDING PARTICIPATION IN NATIONAL PRACTITIONER DATA BANK**

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AUTHORITY: 38 U.S.C. 501; 42 U.S.C. 11101–11152.

SOURCE: 67 FR 19679, Apr. 23, 2002, unless otherwise noted.

**Subpart A—General Provisions**

**§ 46.1 Definitions.**

(a) *Act* means The Health Care Quality Improvement Act of 1986, as amended (42 U.S.C. 11101–11152).

(b) *Claim of medical malpractice* means a written claim or demand for payment based on an act or omission of a physician, dentist, or other health care practitioner in furnishing (or failing to furnish) health care services, and includes the filing of a complaint or administrative tort claim under the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671–2680.

(c) *Clinical privileges* means privileges granted by a health care entity to individuals to furnish health care.

(d) *Dentist* means a doctor of dental surgery or dental medicine legally authorized to practice dental surgery or dentistry by a State (or any individual who holds himself or herself out to be so authorized).

(e) *Director* means the duly appointed director of a Department of Veterans Affairs health care facility or any indi-

vidual with authorization to act for that person in the director's absence.

(f) *Gross negligence* is materially worse than substandard care, and consists of an entire absence of care, or an absence of even slight care or diligence; it implies a thoughtless disregard of consequences or indifference to the rights of others.

(g) *Health care facility* means a hospital, domiciliary, outpatient clinic, or any other entity that provides health care services.

(h) *Other health care practitioner* means an individual other than a physician or dentist who is licensed or otherwise authorized by a State to provide health care services.

(i) *Physician* means a doctor of medicine or osteopathy authorized to practice medicine or surgery by a State (or any individual who holds himself or herself out to be so authorized).

(j) *Professional review action* means a recommendation by a professional review panel (with at least a majority vote) to affect adversely the clinical privileges of a physician or dentist taken as a result of a professional review activity based on the competence or professional conduct of an individual physician or dentist in cases in which such conduct affects or could affect adversely the health or welfare of a patient, or patients. An action is not considered to be based on the competence or professional conduct of a physician or dentist, if the action is primarily based on:

(1) A physician's or dentist's association with, administrative supervision of, delegation of authority to, support for, or training of, a member or members of a particular class of health care practitioner or professional, or

(2) Any other matter that does not relate to the competence or professional conduct of a physician or dentist in his/her practice at a Department of Veterans Affairs health care facility.

(k) *Professional review activity* means an activity with respect to an individual physician or dentist to establish a recommendation regarding:

(1) Whether the physician or dentist may have clinical privileges with respect to the medical staff of the facility;

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(2) The scope or conditions of such privileges or appointment; or

(3) Change or modification of such privileges.

(l) *State* means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other territories or possessions of the United States.

(m) *State Licensing Board* means, with respect to a physician, dentist, or other health care practitioner in a State, the agency of the State, which is primarily responsible for the licensing of the physician, dentist, or practitioner to furnish health care services.

(n) *Willful professional misconduct* means worse than mere substandard care, and contemplates the intentional doing of something with knowledge that it is likely to result in serious injuries or in reckless disregard of its probable consequences.

### § 46.2 Purpose.

The National Practitioner Data Bank, authorized by the Act and administered by the Department of Health and Human Services, was established for the purpose of collecting and releasing certain information concerning physicians, dentists, and other health care practitioners. The Act mandates that the Department of Health and Human Services seek to enter into a Memorandum of Understanding with the Department of Veterans Affairs (VA) for the purpose of having VA participate in the National Practitioner Data Bank. Such a Memorandum of Understanding has been established. Pursuant to the Memorandum of Understanding, VA will obtain information from the Data Bank concerning physicians, dentists, and other health care practitioners who provide or seek to provide health care services at VA facilities and also report information regarding malpractice payments and adverse clinical privileges actions to the Data Bank. This part essentially restates or interprets provisions of that Memorandum of Understanding and constitutes the policy of VA for participation in the National Practitioner Data Bank.

## 38 CFR Ch. I (7-1-08 Edition)

### Subpart B—National Practitioner Data Bank Reporting

#### § 46.3 Malpractice payment reporting.

(a) VA will file a report with the National Practitioner Data Bank, in accordance with regulations at 45 CFR part 60, subpart B, as applicable, regarding any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice. The report will identify the physician, dentist, or other licensed health care practitioner for whose benefit the payment is made. It is intended that the report be filed within 30 days of the date payment is made. This may not be possible in all cases; e.g., sometimes notification of payment is delayed, and sometimes the malpractice payment review process cannot be completed within the timeframe. The report will provide the following information:

(1) With respect to the physician, dentist, or other licensed health care practitioner for whose benefit the payment is made—

(i) Name;

(ii) Work address;

(iii) Home address, if known;

(iv) Social Security number, if known, and if obtained in accordance with section 7 of the Privacy Act of 1974;

(v) Date of birth;

(vi) Name of each professional school attended and year of graduation;

(vii) For each professional license: the license number, the field of licensure, and the State in which the license is held;

(viii) Drug Enforcement Administration registration number, if applicable and known;

(ix) Name of each health care entity with which affiliated, if known.

(2) With respect to the reporting VA entity—

(i) Name and address of the reporting entity;

(ii) Name, title and telephone number of the responsible official submitting the report on behalf of the Federal government; and