

August 12, 2009

NPDB Renders Opinion on Standard for Required Data Bank Reports

The Medical Staff, Credentialing, and Peer Review Discussion List of the American Health Lawyers Association had a recent [exchange](#) among its members about whether termination of a physician for making misstatements and failing to make required disclosures about an insurance gap were reportable to the National Practitioner Data Bank (NPDB). The question boiled down to whether the physician's professional conduct "affects or could adversely affect the health or welfare of a patient or patients . . .," and responding attorneys had conflicting views as to whether such conduct was reportable.

Given the importance of understanding the standard under which NPDB reports are required, a [letter](#) was sent on June 17, 2009, to NPDB requesting an interpretation of the standards as applied to the termination scenario. A [written response](#) from Daryl Gray, director of the Division of Practitioner Data Banks, was received on July 30, 2009, representing the Data Bank's official position. The letter can be summarized as follows:

- The letter affirms the position that a professional review action, based on competence or professional conduct of an individual physician which conduct affects or could affect adversely the health or welfare of a patient or patients, which adversely affects a physician's clinical privileges for more than 30 days, is reportable (citing to E-17 of the NPDB Guidebook).
- According to the letter, "the aforementioned standard is [to] be applied broadly," emphasizing that actions "that have the potential to adversely affect patients" are reportable.
- That being said, NPDB acknowledges that "[w]hether an action affects or could affect patient health or welfare is a factual determination in which the healthcare entity taking the action is in the best position to determine."
- While also accepting the fact that some of these determinations are not easy to make, NPDB believed that in the "hypothetical" presented, "there was a purposeful failure to disclose information to the hospital. The NPDB views intentional misrepresentations to the hospital body making determinations about clinical competence of providers almost per se as having the potential to adversely affect the health or welfare of a patient. Therefore, if this misrepresentation of information is the basis for an adverse action that [adversely] affects clinical privileges for more than 30 days, it would be reportable to the NPDB."

The letter provided a couple of other substantive comments. The June 17, 2009, letter cited to the NPDB Guidebook on page E-22, Example Four, to support the letter's contention that the questioned competence or conduct of a physician must affect or could adversely affect patient care in order to be reportable. The Example dealt with a 31-day

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medical record suspension that most hospitals and medical staffs treat as an administrative or automatic suspension but do not report to the NPDB. The letter states that in the NPDB's opinion, "a failure to complete medical records is related to a physician's professional competence or conduct and almost always has the potential to adversely affect a patient's health or welfare." The letter further states that this "position will be clarified in future editions of the NPDB Guidebook."

An NPDB senior advisor indicated in a follow-up discussion that the NPDB understood that while delays in completing medical records are not uncommon and that not all suspensions should be reportable, repeated offenses and/or lengthy time lapses during which the records are not completed can certainly lead to actual or potential adverse affects on patient health, and therefore a report may be required.

Finally, we were advised that the NPDB has been working on updating the Guidebook for quite some time and hopes to publish a new edition by year's end.

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8/12/09