

**JUL 30 2009**

Bureau of Health Professionals

Michael R. Callahan  
Katten Muchin Rosenman LLP  
525 W. Monroe Street  
Chicago, IL 60661-3693

Re: June 17, 2009, request for clarification

Dear Mr. Callahan:

This letter is in response to the above referenced letter in which you requested clarification of a National Practitioner Data Bank (NPDB) reporting requirement. Specifically, you asked “whether a physician’s competence or conduct, which triggered the adverse credentialing decision, must or could adversely affect patient health or welfare before it can be reported. Stated differently, ‘is conduct or competence which does not adversely affect patient health or welfare reportable?’”

Further, you provided a hypothetical scenario of a physician who “misrepresented information on his reappointment form as well as purposeful failure to disclose a reduction of insurance coverage in violation of the particular medical staff by-laws.”

Generally, as addressed on page E-17 of the NPDB Guidebook, Hospitals and other eligible health care entities must report:

1. Professional review actions that adversely affect a physician’s clinical privileges for a period of more than 30 days; and
2. Acceptance of a physician’s surrender or restriction of clinical privileges while under investigation for possible professional incompetence or improper professional conduct or in return for not conducting an investigation or reportable professional review action.

As you correctly noted, the Health Care Quality Improvement Act (42 U.S.C. 11151) defines a professional review action, in pertinent part, as:

... an action or recommendation of a professional review body which is taken or made in the conduct of a professional review activity, which is based on the competence or professional conduct of an individual physician (which conduct affects or could affect adversely the health or welfare of a patient or patients), and which affects (or may affect) adversely the clinical privileges ...of the physician.

Please be advised that the aforementioned standard is applied broadly. The definition reaches conduct that not only adversely affects patients, but also actions that have the potential to adversely affect patients. The standard is not whether quality of care issues have been raised about a particular provider. This means that if the physician's competence or conduct, which triggered an adverse credentialing decision, affects or *could* adversely affect patient health or welfare, the adverse credentialing decision is reportable to the NPDB if it is in effect for more than 30 days.

Whether 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 it may be hard to determine whether some types of activities could potentially affect patient health or welfare, some types of activities clearly fall within the scope of the definition.

In the hypothetical situation you presented, there was a purposeful failure to disclose information to the hospital. The NPDB views intentional misrepresentations to the hospital body making determinations about the 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 affects clinical privileges for more than 30 days, it would be reportable to the NPDB.

In addition, you referenced the NPDB Guidebook, page E-22, which is as follows:

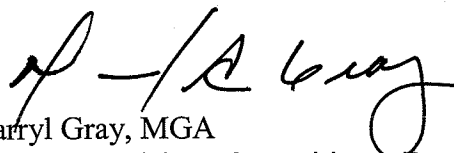
“Example 4: A 31-day suspension is imposed on a physician for failure to complete medical records.

*Such a suspension would be reportable to the NPDB if the failure to complete medical records related to the physician's professional competence or conduct and adversely affects or could adversely affect a patient's health or welfare.”*

It is the position of the NPDB, that a failure to complete medical records generally 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. This position will be clarified in future editions of the NPDB Guidebook.

We hope this information is helpful. Please contact Shirley Jones at [sjones2@hrsa.gov](mailto:sjones2@hrsa.gov) or 301.443.2989 if you have additional questions.

Sincerely,



Darryl Gray, MGA  
Director, Division of Practitioner Data Banks