

§ 46.5

in the State(s) in which the practitioner is licensed. It is intended that the report be filed within 15 days of the date the action is made final, that is, subsequent to any internal appeal.

Subpart C—National Practitioner Data Bank Inquiries

§ 46.5 National Practitioner Data Bank inquiries.

VA will request information from the National Practitioner Data Bank, in accordance with the regulations published at 45 CFR part 60, subpart C, as applicable, concerning a physician, dentist, or other licensed health care practitioner as follows:

(a) At the time a physician, dentist, or other health care practitioner applies for a position at VA Central Office, any of its regional offices, or on the medical staff, or for clinical privileges at a VA hospital or a hospital or other health care entity operated under the auspice of VA;

(b) No less often than every 2 years concerning any physician, dentist, or other health care practitioner who is on the medical staff or who has clinical privileges at a VA hospital or hospital or other health care entity operated under the auspice of VA; and

(c) At other times pursuant to VA policy and needs and consistent with the Act and Department of Health and Human Services Regulations (45 CFR part 60).

Subpart D—Miscellaneous

§ 46.6 Medical quality assurance records confidentiality.

Note that medical quality assurance records that are confidential and privileged under the provisions of 38 U.S.C. 5705 may not be used as evidence for reporting individuals to the National Practitioner Data Bank.

(Authority: 38 U.S.C. 5705)

38 CFR Ch. I (7–1–97 Edition)

PART 47—POLICY REGARDING REPORTING HEALTH CARE PROFESSIONALS UNDER AUTHORITY OF PUBLIC LAW 99–166 AND 38 U.S.C. 501

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AUTHORITY: Pub. L. 99–166, 99 Stat. 941; 38 U.S.C. 501.

SOURCE: 58 FR 48455, Sept. 16, 1993, unless otherwise noted.

Subpart A—General Provisions

47.1 Definitions.

(a) *Act* means section 204 of the act captioned “Veterans Administration Health-Care Amendments of 1985” (Pub. L. 99–166, 99 Stat. 941).

(b) *Dentist* means a doctor of dental surgery or dental medicine legally authorized to practice dental surgery or medical dentistry by a State (or any individual who, without authority, holds himself or herself out to be so authorized).

(c) *Other health care professional* means an individual other than a physician or dentist who is licensed or otherwise authorized by a State to provide health care services (or any individual who, without authority, holds himself or herself out to be so licensed or authorized).

(d) *Physician* means a doctor of medicine or osteopathy legally authorized to practice medicine or surgery by a State (or any individual who, without authority, holds himself or herself out to be so authorized).

(e) *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.

(f) *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 provide health care services.

(g) *Generally accepted standards of clinical practice* means reasonable competence in the clinical aspects of one's responsibilities, as well as the moral and ethical behavior necessary to carry out those responsibilities.

(h) *Separated licensed health care professional* means a licensed health care professional who is no longer on VA rolls, regardless of whether the individual left voluntarily or involuntarily and regardless of the reason why the individual left.

(Authority: Pub. L. 99-166, 99 Stat. 941; 38 U.S.C. 501.)

§ 47.2 Purpose.

VA has had a longstanding practice of reporting to state licensing boards any separated licensed health care professional whose clinical practice so significantly failed to meet generally accepted standards of clinical practice as to raise reasonable concern for the safety of patients. More recently, the Act, among other things, established a mandate for VA to conduct a program to report to state licensing boards any separated licensed health-care professional who was fired or who resigned following the completion of a disciplinary action relating to such individual's clinical competence, who resigned after having had such individual's clinical privileges restricted or revoked, or who resigned after serious concerns about such individual's clinical competence have been raised but not resolved. VA's longstanding practice and its Congressional mandate are compatible and the purpose of this Part is to reflect that it is the policy of VA to report separated health care professionals to state licensing boards consistent with its longstanding practice and its Congressional mandate.

(Authority: Pub. L. 99-166, 99 Stat. 941; 38 U.S.C. 501.)

Subpart B—Reporting Under Authority of Public Law 99-166 and 38 U.S.C. 501

§ 47.3 Reporting to State licensing boards.

VA will report to state licensing boards any separated licensed health-care professional in accordance with its longstanding policy and its Congressional mandate which are both specified in § 47.2 of this Part. The following are examples of actions that meet the criteria for reporting:

(a) Significant deficiencies in clinical practice such as lack of diagnostic or treatment capability, errors in transcribing, administering or documenting medications, inability to perform clinical procedures considered basic to the performance of one's occupation, performing procedures not included in one's clinical privileges in other than emergency situations;

(b) Patient neglect or abandonment;

(c) Mental health impairment sufficient to cause the individual to behave inappropriately in the patient care environment or to provide unsafe patient care;

(d) Physical health impairment sufficient to cause the individual to provide unsafe patient care;

(e) Substance abuse when it affects the individual's ability to perform appropriately as a health care provider or in the patient care environment;

(f) Falsification of credentials;

(g) Falsification of medical records or prescriptions;

(h) Theft of drugs;

(i) Inappropriate dispensing of drugs;

(j) Unethical behavior (such as sexual misconduct toward a patient);

(k) Mental, physical, sexual, or verbal abuse of a patient (examples of patient abuse include intentional omission of care, willful violation of a patient's privacy, willful physical injury, intimidation, harassment, or ridicule); and

(l) Violation of research ethics.

(Authority: Pub. L. 99-166, 99 Stat. 941; 38 U.S.C. 501.)