

#### § 46.4

#### 38 CFR Ch. I (7-1-00 Edition)

attached thereto, including terms of payment,

(vi) A description of the acts or omissions and injuries or illnesses upon which the action or claim was based, and

(vii) Classification of the acts or omissions in accordance with a reporting code adopted by the Secretary of Health and Human Services.

(b) A copy of the report referred to in paragraph (a) of this section will also be filed with the State Licensing Board in the State(s) in which the practitioner is licensed and with the State Licensing Board in the State in which the act or omission occurred upon which the medical malpractice claim was based.

(c) Payment will be considered to have been made for the benefit of a physician, dentist or other licensed health care practitioner only if the Director of the facility at which the act or omission occurred upon which the malpractice claim was based, affirms a conclusion (of at least a majority) of a peer review body that payment was related to substandard care, professional incompetence or professional misconduct on the part of the physician, dentist or other licensed health care practitioner. For purposes of this part, a peer review body shall have a minimum of three individuals appointed by the facility Director (including at least one member of the profession/occupation of the practitioner(s) whose actions are under review). The conclusions of the peer review body shall, at a minimum, be based on review of documents pertinent to the claim and, to the extent practicable, shall include information collected directly from the individual for whose benefit payment was made. Prior to a determination by the Director, the individual under consideration for reporting shall be afforded the opportunity for discussion with the facility Director and any other individuals designated by the facility Director.

#### § 46.4 Clinical privileges actions reporting.

(a) VA will file an original and one copy of an adverse action report with the State Licensing Board in the State in which the facility is located in ac-

cordance with regulations at 45 CFR part 60, subpart B, as applicable, regarding any of the following actions:

(1) An action of a Director after consideration of a professional review action that, for a period longer than 30 days, adversely affects (by reducing, restricting, suspending, revoking, or failing to renew) the clinical privileges of a physician or dentist relating to possible incompetence or improper professional conduct.

(2) Acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding.

(b) The report specified in paragraph (a) of this section will provide the following information—

(1) With respect to the physician or dentist:

(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 name of the State in which the license is held,

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

(ix) A description of the acts or omissions or other reasons for privilege loss, or, if known, for surrender,

(x) Action taken, date action was made final, length of action, and effective date of the action;

(2) With respect to the VA facility—

(i) Name and address of the reporting facility,

(ii) Name, title, and telephone number of the responsible official submitting the report.

(c) A copy of the report referred to in paragraph (a) of this section will also be filed with the State Licensing Board

## Department of Veterans Affairs

## 47.1

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)

## PART 47—POLICY REGARDING REPORTING HEALTH CARE PROFESSIONALS TO STATE LICENSING BOARDS

Sec.  
47.1 Definitions.

47.2 Reporting to State Licensing Boards.

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

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

### 47.1 Definitions.

(a) *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).

(b) *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).

(c) *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).

(d) *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.

(e) *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.

(f) *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.

(g) *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.

(h) *Currently employed licensed health care professional* means a licensed health care professional who is on VA rolls.