

be construed as creating a presumption that medical malpractice has occurred.

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**§ 60.8 Reporting licensure actions taken by Boards of Medical Examiners.**

(a) *What actions must be reported.* Each Board of Medical Examiners must report to the Data Bank any action based on reasons relating to a physician's or dentist's professional competence or professional conduct—

- (1) Which revokes or suspends (or otherwise restricts) a physician's or dentist's license,
  - (2) Which censures, reprimands, or places on probation a physician or dentist, or
  - (3) Under which a physician's or dentist's license is surrendered.
- (b) *Information that must be reported.* The Board must report the following information for each action:
- (1) The physician's or dentist's name,
  - (2) The physician's or dentist's work address,
  - (3) The physician's or dentist's home address, if known,
  - (4) The physician's or dentist's Social Security number, if known, and if obtained in accordance with section 7 of the Privacy Act of 1974,
  - (5) The physician's or dentist's date of birth,
  - (6) Name of each professional school attended by the physician or dentist and year of graduation,
  - (7) For each professional license, the physician's or dentist's license number, the field of licensure and the name of the State or Territory in which the license is held,
  - (8) The physician's or dentist's Drug Enforcement Administration registration number, if known,
  - (9) A description of the acts or omissions or other reasons for the action taken,
  - (10) A description of the Board action, the date the action was taken, and its effective date,
  - (11) Classification of the action in accordance with a reporting code adopted by the Secretary, and

(12) Other information as required by the Secretary from time to time after publication in the FEDERAL REGISTER and after an opportunity for public comment.

(c) *Sanctions.* If, after notice of non-compliance and providing opportunity to correct noncompliance, the Secretary determines that a Board has failed to submit a report as required by this section, the Secretary will designate another qualified entity for the reporting of information under § 60.9.

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**§ 60.9 Reporting adverse actions on clinical privileges.**

(a) *Reporting to the Board of Medical Examiners—*(1) *Actions that must be reported and to whom the report must be made.* Each health care entity must report to the Board of Medical Examiners in the State in which the health care entity is located the following actions:

- (i) Any professional review action that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days;
  - (ii) Acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist—
    - (A) While the physician or dentist is under investigation by the health care entity relating to possible incompetence or improper professional conduct, or
    - (B) In return for not conducting such an investigation or proceeding; or
  - (iii) In the case of a health care entity which is a professional society, when it takes a professional review action concerning a physician or dentist.
- (2) *Voluntary reporting on other health care practitioners.* A health care entity may report to the Board of Medical Examiners information as described in paragraph (a)(3) of this section concerning actions described in paragraph (a)(1) in this section with respect to other health care practitioners.
- (3) *What information must be reported.* The health care entity must report the following information concerning actions described in paragraph (a)(1) of this section with respect to the physician or dentist:
- (i) Name,

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- (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 or Territory in which the license is held,
- (viii) Drug Enforcement Administration registration number, if known,
- (ix) A description of the acts or omissions or other reasons for privilege loss, or, if known, for surrender,
- (x) Action taken, date the action was taken, and effective date of the action, and
- (xi) Other information as required by the Secretary from time to time after publication in the FEDERAL REGISTER and after an opportunity for public comment.

(b) *Reporting by the Board of Medical Examiners to the National Practitioner Data Bank.* Each Board must report, in accordance with §§ 60.4 and 60.5, the information reported to it by a health care entity and any known instances of a health care entity's failure to report information as required under paragraph (a)(1) of this section. In addition, each Board must simultaneously report this information to the appropriate State licensing board in the State in which the health care entity is located, if the Board is not such licensing board.

(c) *Sanctions—(1) Health care entities.* If the Secretary has reason to believe that a health care entity has substantially failed to report information in accordance with § 60.9, the Secretary will conduct an investigation. If the investigation shows that the health care entity has not complied with § 60.9, the Secretary will provide the entity with a written notice describing the non-compliance, giving the health care entity an opportunity to correct the non-compliance, and stating that the entity may request, within 30 days after receipt of such notice, a hearing with respect to the noncompliance. The request for a hearing must contain a statement of the material factual

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issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC, metropolitan area. The Secretary will deny a hearing if:

- (i) The request for a hearing is untimely,
- (ii) The health care entity does not provide a statement of material factual issues in dispute, or
- (iii) The statement of factual issues in dispute is frivolous or inconsequential.

In the event that the Secretary denies a hearing, the Secretary will send a written denial to the health care entity setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing the entity is found to be in noncompliance, the Secretary will publish the name of the health care entity in the FEDERAL REGISTER. In such case, the immunity protections provided under section 411(a) of the Act will not apply to the health care entity for professional review activities that occur during the 3-year period beginning 30 days after the date of publication of the entity's name in the FEDERAL REGISTER.

(2) *Board of Medical Examiners.* If, after notice of noncompliance and providing opportunity to correct non-compliance, the Secretary determines that a Board has failed to report information in accordance with paragraph (b) of this section, the Secretary will designate another qualified entity for the reporting of this information.

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### Subpart C—Disclosure of Information by the National Practitioner Data Bank

#### § 60.10 Information which hospitals must request from the National Practitioner Data Bank.

(a) *When information must be requested.* Each hospital, either directly or through an authorized agent, must request information from the Data Bank concerning a physician, dentist