

#### § 46.4

#### 38 CFR Ch. I (7-1-13 Edition)

dentist or other health care practitioner was acting in a supervisory capacity; that the payment was related to substandard care, professional incompetence, or professional misconduct of the trainee and not the supervisor; and that the trainee did not commit gross negligence or willful professional misconduct. Such report will note that the physician, dentist, or other health care practitioner is being reported in a supervisory capacity.

NOTE TO PARAGRAPH (C): Licensed trainees acting outside the scope of their training program (e.g. acting as admitting officer of the day) will be reported under the provisions of paragraph (b) of this section.

(d) The Director of the facility at which the claim arose has the primary responsibility for submitting the report to the National Practitioner Data Bank and for providing a copy to the practitioner, to the State Licensing Board in each State where the practitioner holds a license, and to the State Licensing Board in which the facility is located. However, the Chief Patient Care Services Officer is also authorized to submit the report to the National Practitioner Data Bank and provide copies to the practitioner and State Licensing Boards in cases where the Chief Patient Care Services Officer deems it appropriate to do so. The Director of the facility also shall provide to the practitioner a copy of the review panel's notification to the Director.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0621)

#### § 46.4 Clinical privileges actions reporting.

(a) VA will file an adverse action report with the National Practitioner Data Bank in accordance 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, including the surrender of clinical privileges inherent in resignation or retirement, 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 whether or not the individual remains in VA service.

(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; and
- (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; and
- (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 in the State(s) in which the practitioner is licensed and in which the facility is located. 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 (to the facility) appeal.

(d) As soon as practicable after it is determined that a report shall be filed with the National Practitioner Data

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Bank and State Licensing Boards under paragraphs (a)(2) and (c) of this section, VA shall provide written notice to the practitioner that a report will be filed with the National Practitioner Data Bank with a copy to the State Licensing Board in each State in which the practitioner is licensed and in the State in which the facility is located.

### 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 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 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.

#### § 46.7 Prohibitions concerning negotiations.

Reporting under this part (including the submission of copies) may not be

the subject of negotiation in any settlement agreement, employee action, legal proceedings, or any other negotiated settlement.

#### § 46.8 Independent contractors.

Independent contractors acting on behalf of the Department of Veterans Affairs are subject to the National Practitioner Data Bank reporting provisions of this part. In the following circumstances, VA will provide the contractor with notice that a report of a clinical privileges action will be filed with the National Practitioner Data Bank with a copy with the State Licensing Board in the State(s) in which the contractor is licensed and in which the facility is located: where VA terminates a contract for possible incompetence or improper professional conduct, thereby automatically revoking the contractor's clinical privileges, or where the contractor terminates the contract, thereby surrendering clinical privileges, either while under investigation relating to possible incompetence or improper professional conduct or in return for not conducting such an investigation or proceeding.

(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