National Practitioner Data Bank
Healthcare Integrity and Protection Data Bank

P.O. Box 10832, Chantilly, Virginia 20153-0832 • www.npdb-hipdb.hrsa.gov

FACT SHEET ON PROFESSIONAL REVIEW IMMUNITY

Background of the National Practitioner Data Bank

The National Practitioner Data Bank (NPDB) was established through Title IV of Public Law 99-660, the *Health Care Quality Improvement Act of 1986* (the Act), as amended. Final regulations governing the NPDB are codified at 45 CFR Part 60. Responsibility for NPDB implementation resides in the Bureau of Health Professions, Health Resources and Services Administration (HRSA), U.S. Department of Health and Human Services (HHS).

The intent of Title IV of P.L. 99-660 is to improve the quality of health care by encouraging State licensing boards, hospitals and other health care entities, and professional societies to identify and discipline those who engage in unprofessional behavior; and to restrict the ability of incompetent physicians, dentists, and other health care practitioners to move from State to State without disclosure or discovery of previous medical malpractice payment and adverse action history. Adverse actions can involve licensure, clinical privileges, professional society membership, and exclusions from Medicare and Medicaid.

Interpretation of NPDB Information

The NPDB is primarily an alert or flagging system intended to facilitate a comprehensive review of health care practitioners' professional credentials. Eligible entities should use the information contained in the NPDB in conjunction with information from other sources when granting clinical privileges or in employment, affiliation, or licensure decisions.

For more information on the NPDB, see the *Fact Sheet on the National Practitioner Data Bank*.

Immunity and Professional Review Activity

To receive immunity protection, a professional review action regarding the professional competence or professional conduct of a practitioner must be taken:

- In the reasonable belief that the action was in the furthering of quality health care.
- After a reasonable effort to obtain the facts of the matter.
- After adequate notice and hearing procedures are afforded to the practitioner involved, or after such other procedures as are fair to the practitioner under the circumstances.
- In the reasonable belief that the action was warranted by the facts known, after such reasonable effort to obtain facts and after meeting the notice and hearing requirement.

Because the immunity provided by the *Health Care Quality Improvement Act* is from liability rather than from suit, a disciplined practitioner retains the right to sue; however, the court may award attorneys' fees and court costs to the defendants if the suit is determined to be frivolous, unreasonable, without foundation, or in bad faith.

Notice and Hearing Requirements

The law specifies that a health care entity is deemed to have met the adequate notice and hearing requirement with respect to a practitioner if the following conditions are met (or waived voluntarily by the practitioner):

- The practitioner has been given notice stating:
  - that a professional review action has been proposed to be taken against the practitioner and the reasons for the proposed action,
  - that the practitioner has the right to request a hearing on the proposed action and any time limit, of not less than 30 days, within which to request such a hearing, and
  - a summary of rights in the hearing.
- If a hearing is requested on a timely basis, the practitioner involved must be given notice stating:
  - the place, time, and date of the hearing, which shall not be less than 30 days after the date of the notice, and
  - a list of the witnesses, if any, expected to testify at the hearing on behalf of the professional review body.
- If a hearing is requested on a timely basis:
  - the hearing shall be held, as determined by the health care entity: before an arbitrator mutually acceptable to the practitioner and the health care entity, before a hearing officer who is appointed by the entity and who is not in direct economic competition with the practitioner involved, or before a panel of individuals who are appointed by the entity and not in direct economic competition with the practitioner involved,

- the right to the hearing may be forfeited if the practitioner fails, without good cause, to appear, and

- in the hearing, the practitioner involved has the right to representation by an attorney or other person of the practitioner's choice; to have a record made of the proceedings, copies of which may be obtained by the practitioner upon payment of any reasonable charges associated with the preparation thereof; to call, examine, and cross-examine witnesses; to present evidence determined to be relevant by the hearing officer, regardless of its admissability in a court of law; and to submit a written statement at the close of the hearing.

- Upon completion of the hearing, the practitioner has the right:

  - to receive the written recommendations of the arbitrator, officer, or panel, including a statement of the basis for the recommendations, and

  - to receive a written decision of the health care entity, including a statement of the basis for the decision.

If the peer review committee provides these procedures to the practitioner, the health care entity will be considered to have met the notice and hearing requirements of the law. However, the test of "adequacy" may still be met under other prevailing law. For example, some courts have carefully spelled out different requirements for certain professional review activities or actions, such as procedures for decisions regarding applicants for clinical privileges at a hospital. In those situations, compliance with applicable law should satisfy the "adequacy" requirement even where such activities or actions require different or fewer due process rights than those specified under Title IV.

Nothing in this section should be construed as precluding an immediate suspension or restriction of clinical privileges, subject to subsequent notice and hearing or other adequate procedures, where the failure to take such an action may result in an imminent danger to the health of any individual.

Sanctions for Failing to Report to the NPDB and the HIPDB

If HHS determines that a health care entity has substantially failed to report information in accordance with Title IV requirements, the name of the entity will be published in the *Federal Register*, and the entity will lose the immunity provisions of Title IV with respect to professional review activities for a period of 3 years, commencing 30 days from the date of publication in the *Federal Register*.

Reportable Adverse Clinical Privileges

Health care entities must report adverse actions within 15 days from the date the adverse action was taken or clinical privileges were voluntarily surrendered. Reportable adverse clinical privileges actions are based on a practitioner's professional competence or professional conduct that adversely affects, or could adversely affect, the health or welfare of a patient.

Hospitals and other eligible health care entities must report:

- Professional review actions that adversely affect a practitioner's clinical privileges for a period of more than 30 days.

- Acceptance of a practitioner'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.

Adverse actions taken against a physician's or dentist's clinical privileges include reducing, restricting, suspending, revoking, or denying privileges, and also include a health care entity's decision not to renew a physician's or dentist's privileges if that decision was based on the practitioner's professional competence or professional conduct. Health care entities may report such actions taken against the clinical privileges of other health care practitioners.

Hospitals and other health care entities must report revisions to previously reported adverse actions.

NPDB-HIPDB Assistance

For additional information, visit the NPDB-HIPDB Web site at *www.npdb-hipdb.hrsa.gov*. If you need assistance, contact the NPDB-HIPDB Customer Service Center by e-mail at *npdb-hipdb@sra.com* or by phone at 1-800-767-6732 (TDD 703-802-9395). Information Specialists are available to speak with you weekdays from 8:30 a.m. to 6:00 p.m. (5:30 p.m. on Fridays) Eastern Time. The NPDB-HIPDB Customer Service Center is closed on all Federal holidays.