

POLICY AND COMMUNICATIONS BULLETIN THE CLINICAL CENTER

Medical Administrative Series

M87-5 (rev.)

19 September 2003

MANUAL TRANSMITTAL SHEET

SUBJECT: Peer Review; Identification and Management of Impaired Practitioners; Reporting Adverse Actions on Clinical Privileges; and Reporting Payments on Malpractice Claims

1. Explanation of Material Transmitted: This policy was reviewed in August 2003 and approved with minor changes.
2. Material Superseded: MAS No. M87-5 (rev.), dated 4 October 2000
3. Filing Instructions: Medical Staff Section

Remove: No. M87-5 (rev.), dated 4 October 2000

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DISTRIBUTION

Physicians, Dentists and Other Practitioners Participating in
Patient Care

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SUBJECT: Peer Review; Identification and Management of Impaired Practitioners; Reporting Adverse Actions on Clinical Privileges; and Reporting Payments on Malpractice Claims

PURPOSE

This issuance sets forth the policy and procedures regarding the identification, management, and reporting of impaired and other problematic medical staff members, the management of adverse actions on clinical privileges; and the reporting of payments on malpractice claims.

BACKGROUND

Hospitals are expected to have credentialing, peer review, and quality assurance programs that reduce risks to patients and also reduce the vulnerability of the hospital to malpractice claims. Although the identification of fraudulent, impaired, or incompetent health-care professionals is fraught with difficulty, the Federal Government and many state governments have implemented mandatory reporting of certain types of complaints and disciplinary actions filed against health-care professionals.

Title IV of P.L. 99-660, the Health Care Quality Improvement Act of 1986, as amended, requires that three types of information be reported to the Secretary of the Department of Health and Human Services (HHS): 1) medical malpractice payments made on behalf of a medical staff member or a licensed healthcare practitioner; 2) adverse licensure actions by state boards of medical or dental

examiners or state licensing agency; and 3) professional review actions adversely affecting clinical privileges for more than 30 days, or certain surrenders of privileges. The National Practitioner Data Bank (NPDB) was established by the Secretary of HHS as the appropriate agency for reporting. In 1987, the Assistant Secretary for Health determined that PHS would participate in such reporting to the NPDB. The NPDB regulations were originally published on 17 October 1989 (54 Fed. Reg. 42732) and are codified at 45 CFR Part 60. The NPDB began operations on 1 September 1990.

POLICY

1. A report will be filed with the Maryland State Board of Physicians within 10 days of the action taken, whenever the CC Medical Executive Committee, in conjunction with the appropriate Institute Clinical Director or CC Medical Department Head, has taken a professional review action which:
 - a. Denied the application of a physician for Medical Staff privileges;
 - b. Limited, reduced, suspended, or terminated a staff member's privileges for a period of more than 30 days;
 - c. Accepted a surrender of clinical privileges or any restriction of privileges while the staff member is under investigation or in return for not conducting an investigation.
2. The grounds for disciplinary action regarded as especially pertinent to staff members involved in clinical work at the CC (or to those who are applying for clinical privileges here) include the following:
 - a. The staff member has deceptively used a medical license or applied for staff privileges under conditions of deception;
 - b. The staff member has demonstrated immoral or unprofessional conduct in the practice of medicine;

- c. The staff member is considered by peers to be professionally, physically, or mentally incompetent;
 - d. The staff member is habitually intoxicated, abuses controlled substances, or provides services while under the influence of alcohol or drugs;
 - e. The staff member promotes the sale of drugs or devices to a patient for financial gain;
 - f. The staff member solicits or advertises in violation of Section 14-503 of the Maryland Annotated Code (Health Occupations);
 - g. The staff member is disciplined by a licensing or disciplinary authority, or is convicted by any court for an act that would be grounds for disciplinary action in Maryland (cf. Section 14-404 of the Maryland Annotated Code, Health Occupations—"Denials, Reprimands, Suspensions, and Revocations—Grounds");
 - h. The staff member demonstrates behavior constituting other grounds for disciplinary action (pertinent to the CC) as contained in Section 14-404, cited above;
 - i. The staff member abandons a patient;
 - j. The staff member violates the medical Staff Bylaws, rules or standards of professional clinical practice of the CC; or
 - k. The staff member displays conduct, either inside or outside the hospital that is deemed inadequate or substandard clinical or professional performance, detrimental to patient safety or to the delivery of quality patient care, or disruptive to the operation of the hospital.
3. A report will be automatically issued to the NPDB whenever a payment is made on a malpractice claim involving a member of the medical staff, past or present.
4. This policy applies to all staff members, whether they are in postgraduate training programs or already in staff positions,

and whether they are currently licensed by the State of Maryland or by another jurisdiction.

5. Reports to the Medical Executive Committee concerning Articles IX (Corrective Action) and X (Hearing Procedures) of the Bylaws are confidential and fall within the peer review privilege; they are not protectable from discovery in certain proceedings.

PROCEDURES

1. The procedures to be followed where grounds for disciplinary action are believed to exist are those described in Articles IX and X of the Medical Staff Bylaws.
2. If a disciplinary action is reportable, the Director, CC, (or his/her designee) will notify the complainee and the Maryland State Board of Physicians [and, if applicable, the Board(s) of Medical Examiners in the state(s) or territory(ies) in which the complainee holds his/her license(s)].
3. If the staff member subject of the disciplinary action successfully completes an appropriate, specified treatment/rehabilitation program, this outcome will be conveyed to the Maryland State Board of Physicians (and other Boards of Medical Examiners, if applicable), to be incorporated into the individual's file.
4. When a malpractice claim is filed, the CC will conduct a peer review to determine if the claimant was injured, and, if so, if the injury was the result of a failure to meet the standard of care. The Associate Director for Quality Assurance will appoint one or more consultants from the medical staff to prepare documentation for the PHS Quality Review Panel, including:
 - a. the relevant medical records;
 - b. a narrative summary of the episode, including relevant acts of commission or omission, and any injuries or illnesses upon which the claim is based;

- c. the state(s) of licensure for those practitioners determined to be clinically responsible for the episode.
5. The consultants will review all the available documentation and assess whether the care provided was equal to or less than the standard of care in the community.
6. This assessment and the accompanying documentation will be forwarded to the PHS Quality Review Panel who, in turn, will evaluate the claim and the consultants' recommendations and assessment, obtain outside review (if necessary), and make a recommendation to the PHS Claims Branch regarding the merits of the claim.
7. Whenever a payment on a claim is made a report will be made to the NPDB and copies of the report will be sent to the appropriate licensing board(s) in the state in which the claim arose and in the state(s) of known licensure of the practitioner, and to the Office of the Surgeon General.
8. The Office of the Surgeon General, in turn, notifies the NIH and the PHS Claims Branch. NIH, in turn, notifies the practitioner that the report has occurred.
9. For informational and risk management purposes, copies of reports sent to state board(s) on adverse actions on clinical privileges taken against a PHS staff member will be sent by the Director, CC, to the Agency Head responsible for the staff member's assignment, the Office of the Surgeon General, and to the Director, Division of Quality Assurance and Liability Management, Bureau of Health Professions, HRSA.