The National Practitioner Databank (NPDB) Explained

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ADVOCATE. EDUCATE. NAVIGATE.
Objectives

• Explain the NPDB.
  — What can be reported, Who can report, Who can access the NPDB, How to know if you’ve been reported.

• Describe the NPDB Dispute Process.
  — Disputed Status, Dispute Resolution, Reconsideration, Court Actions, Subject Statements.

• Discuss recommendations if reported to the NPDB or disputing a NPDB report.
What is the NPDB?

• A government repository that collects, stores, and discloses certain adverse information about health care practitioners.

• Unless corrected or voided, reports are permanent.

• Who can be reported?
  — Practitioners (physicians, dentists, nurses, physician assistants, chiropractors, pharmacists, etc.).
  — Health care entities, providers, and suppliers.

• Penalties for not reporting.
What is the NPDB?

• Created by the Health Care Quality Improvement Act (HCQIA) and subsequent federal regulations

• Why was HCQIA enacted?
  — To improve quality of health care by:
    ▪ Promoting effective peer review
    ▪ Restricting ability of practitioners, with histories of malpractice, from moving between states

• Under HCQIA, Secretary of the Department of Health and Humans Services (HHS) could designate an agency to receive reports:
  — The Health Resources and Services Administration’s (HRSA) Bureau of Health Workforce
Who Submits to the NPDB?

- Medical malpractice payers
- Peer review organizations
- Certain professional membership societies
- Hospitals, health plans, and other health care entities
- Private accreditation organizations
- State licensing and certification authorities (State Boards)
- Federal and state agencies administering health care programs and law enforcement agencies
- Quality improvement organizations
- Federal and state prosecutors
What is in a NPDB Report?

• Narrative Description:
  — Sufficient detail to give a clear understanding of the event upon which the report is based.

• Medical Malpractice Reports:
  — Separate description of the judgment or settlement and any conditions including terms of payment.
  — What if terms are confidential?
What Is Reportable to the NPDB?

• Medical Malpractice Payments
• Adverse Licensure, Clinical Privilege, and Professional Society Membership Actions
• Negative Peer Review and Private Accreditation Actions or Findings
• Exclusion from Participation in Federal or State Health Care Programs
• Criminal or Civil Judgments Related to the Delivery of a Health Care Service or Item
Medical Malpractice Payments

• A medical malpractice payment must be reported if:

  A payment is made
  By a third party
  For the benefit of a health care practitioner
  Against whom a medical malpractice claim or judgment was made.
Medical Malpractice Payments

• The NPDB defines a medical malpractice claim as a written claim or demand for payment based on a provider’s furnishing or failure to furnish health care services.

• There is **NO** minimum amount of payment.

• Settlements **MUST BE** reported.
State Licensure Actions

• Any adverse action
  — Revocation, suspension, reprimand, censure, probation.
  — When a license, agreement, or contract is suspended, the length of the suspension must be reported also.

• As a result of formal proceeding, or
  — Formal hearing, settlement agreement, consent order, etc.
  — Does have to be publicly available to be reportable.

• A dismissal or closure of a formal proceeding because the practitioner left the jurisdiction or surrendered license.
Adverse Clinical Privilege Actions

- Any action that adversely affects clinical privileges
- For longer than 30-day requirement
- As a result of a professional review action
- Or a surrender or voluntarily restriction of privileges while under investigation, relating to professional competence or conduct, or in return for forgoing such an investigation.
What is a professional review action?

- An action or recommendation of a professional review body which is taken or made in the conduct of a professional review activity, which is based on the competence or professional conduct of an individual physician and which affects or may affect adversely the clinical privileges or membership in a professional society of a physician.

42 U.S. Code § 11151
Investigations And Surrenders

• What is an investigation?
  — Not defined in NPDB regulations or relevant statutes.
    › NPDB interprets investigations broadly, retains final authority to determine whether an investigation exists.
  — Investigation must be focused on the practitioner in question and concern professional conduct or competence.
  — Practitioner does not need to be aware of investigation.
  — Investigation is considered ongoing until a final action is taken or it is formally closed.
Investigations and Surrender

• What is not an investigation?
  — Routine/general review of cases
  — Routine review of a particular practitioner

• What is a surrender?
  — Failure to renew
  — Withdraw of an application
  — Leave of absence that restricts privileges
Who Can Access NPDB Reports?

- May be queried by hospitals, health plans, state licensure boards, and other health care entities.

- Hospitals are the only entity required to query by law:
  - When practitioners apply for clinical privileges.
  - When practitioners seek to expand existing privileges.
  - Every two years for practitioners on their medical staffs or who have been granted clinical privileges.
Who Can Access NPDB Reports?

- Practitioners may perform a self query at any time (there is a fee).
- Reports are not accessible by the general public.
How is a NPDB Report Processed?

1. Reporting entity submits report.
   — Often through an authorized agent.

2. NPDB processes it.

3. NPDB sends notice of report to the subject practitioner.
   — Includes instructions on how to obtain full official report
Adding a Subject Statement

• Can be added at any time.

• Remains with report unless removed or edited by the author.

• Accessible to all querying entities.
Adding a Subject Statement

- With a subject statement, a practitioner can:
  - Clarify their involvement.
  - Give perspective.
  - Explain conduct.
  - Provide additional information.
- Subject statements cannot include any identifying information.
- NPDB reserves right to redact personal identifying information and offensive language.
The Dispute Process - Background

• If subject practitioner disagrees with factual accuracy of report or questions whether a report was properly submitted, they may dispute.

• Reporting entities are responsible for accuracy.

• Only reporting entities can revise, correct, or modify reports.

• To successfully appeal NPDB information, the Dispute Process must be strictly adhered to.
The Dispute Process

1. Entering report into ‘Dispute Status’

2. Elevating dispute to Dispute Resolution
Dispute Status

• Subject must enter report into dispute status.
  — Notation that the report is under dispute will be visible to all querying entities.
• Subject must contact the reporting entity and attempt to resolve dispute.
• Reporting entity has 60 days to respond.
  — If reporting entity does not respond within 60 days or subject disagrees with the response received, subject may elevate to ‘Dispute Resolution.’
Dispute Resolution

- NPDB will ONLY:
  - Review the report for factual accuracy, or
  - Determine whether report was submitted within NPDB guidelines.
- NPDB will offer no opinion on malpractice payments, due process, or allegations of misconduct.
Dispute Resolution

• To elevate the dispute to dispute resolution, subject practitioner must:
  — Submit proof of unsuccessful attempt to resolve dispute with reporting entity.
  — Describe points of dispute.
  — Submit documentation demonstrating that report is factually inaccurate or was not submitted in accordance with NPDB reporting requirements.
Dispute Resolution

• A Dispute Resolution Manager will conclude one of the following:
  — Report is accurate as submitted; will remain as is.
  — Report is inaccurate as submitted; will direct reporting entity to revise.
  — Report was not submitted in accordance with reporting requirements; will void report.
  — Disputed information is outside scope of departmental review; report will remain as is.
Reconsideration of Dispute Resolution

• Practitioner may request reconsideration of a dispute resolution decision.
  — Resubmit dispute to Dispute Resolution.
  — Include any new information previously unavailable.
  — Explain issue(s) that practitioner believes were inappropriately reviewed during initial review.

• Dispute Resolution Manager will either:
  — Affirm previous decision, or
  — Issue a revised final decision.
Court Appeals and Other Remedies

• **Administrative Procedure Act (APA)**
  — Allows judicial review of an agency decision, if individual suffers a legal wrong.
  — Wronged party must demonstrate that the agency action was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.
  — Must be brought in federal court.

• **Injunctions**
  — Actions to prohibit an entity from reporting to the NPDB or void a submitted NPDB report.
Recommendations to Avoid Reporting

• Win a malpractice suit
  — Settlements and adverse judgments necessitate NPDB reporting

• Avoid a malpractice suit
  — Resolve before a written demand

• Understand when an investigation is ongoing
  — Do not resign privileges while under investigation
Recommendations to Avoid Reporting

Continued

• Malpractice payments
  — Consider making payment from personal funds
  — If dismissed, ensure that your name is not associated with any later settlement or judgment
  — Understand when payment will be submitted to the NPDB and when it will not
Recommendations If Reported

• Add a subject statement.

• Understand that the NPDB Dispute Process is limited in scope.
  — NPDB will only review a dispute for:
    • Factual accuracy, or
    • Noncompliance with reporting requirements.

• If disputing a NPDB report, obtain experienced legal counsel to assist you.
Resources

• Statutes & Regulations
  — Health Care Quality Improvement Act: [42 U.S. Code Chapter 117](#)
  — NPDB Regulations: [45 CFR §§ 60.1-60.22](#)

• PAMED Resources
  — The ABCs of the NPDB: What Physicians Should Know
  — The ABCs of the NPDB: Disputing a Report
  — PAMED’s Guide to the NPDB

• HRSA Resources
  — The NPDB Guidebook
  — NPDB Website