New Law and Updates for Physician Reporting Webinar

February 13, 2018

Welcome

Amber McEwen
California Hospital Association
Continuing Education

Continuing education will be offered for this program for compliance, health care executives and legal.

Full attendance and completion of the online evaluation and attestation of attendance are required to receive CEs for this webinar. CEs are complimentary and available for the registrant only.

Faculty

David Perrott, MD, MBA, FACS, is senior vice president and chief medical officer for the California Hospital Association. He serves as CHA’s resource for medical staff issues, accreditation and licensing, and policy issues regarding patient safety and quality. He oversees CHA’s Center for Hospital Medical Executives and Joint Committee on Accreditation and Licensing. He also serves as board chair for the Hospital Quality Institute and is a member of the Board of Commissioners of The Joint Commission.
Lowell Brown is a partner and national leader of the Health Care Practice Group at Arent Fox LLP. He advises hospitals, medical staffs, health systems, long-term care facilities, medical groups and other health care provider organizations in business, regulatory and medico-legal matters, with an emphasis on laws relating to operational issues.

Kimberly Kirchmeyer is executive director of the Medical Board of California where she is responsible for overseeing the daily operations of the organization and the delivery of program services to the consumers and physicians of California. Ms. Kirchmeyer works closely with the Board to promote effective planning and implementation of its policies into program operations.
Faculty

**Claudia Rausch** is a management analyst for the Policy and Disputes Branch of the National Practitioner Data Bank (NPDB). She works on numerous policy issues and helps develop processes to support and enforce NPDB regulation. Prior to working at NPDB, Ms. Rausch spent eight years overseeing medical staff service programs, and managing accreditation and compliance activities within private hospital settings and within the government at the Department of Veterans Affairs.

Faculty

**Jackie Garman** is Vice President, Legal Counsel, for the California Hospital Association. In this role, Ms. Garman oversees and coordinates CHA's legal representation in litigation critical to the hospital industry, assists with evaluating the legal impact of legislation and regulations on hospitals, and serves as a resource for member hospitals.
Physician Reporting
Update Overview

David Perrott, MD, DDS, MBA, FACS
Senior Vice President & Chief Medical Officer
California Hospital Association
Change Highlights

- Definition of an investigation and reporting
- Summary suspensions
- Proctors
- Employment actions vs. professional actions

Mandatory Reporting to the Medical Board of California

- Business and Professions Code contains a number of reporting requirements
- Business and Professions Code 805
  - Requires reporting for denial, termination or revocation for a medical disciplinary reason
- Business and Professions Code 805.01
  - Report within 15 days after peer review body makes final decision or recommendation to take a disciplinary action
Medical Board of California Response

Recommendation from the Medical Board of California for legislation to address reporting compliance:

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MBC has attempted to enhance knowledge of this requirement but is not receiving reports as required. In FY 2015/2016, five reports were received pursuant to B&P 805.01, while in this same fiscal year, 127 B&P Code section 805 reports were received.
Senate Bill 798 Reporting Requirements

Presented by
Lowell C. Brown
213.443.7656
lowell.brown@arentfox.com
1. What Does the Bill Require Regarding Reporting and Who Does it Impact?
Section 805.01 — What, Why, What’s New?

One of the most misunderstood and neglected reporting statutes

Often confused with Section 805

Often overlooked

Now has "teeth"

Same penalties for non-reporting that apply to Section 805

Review: Section 805.01 Required Reporting

Within 15 days after:

Final decision or recommendation regarding any of certain disciplinary actions

Following formal investigation

Based on medical disciplinary cause or reason
Which Disciplinary Actions?

- Denial of application for privileges or membership
  OR
- Termination or revocation of membership, staff privileges or employment
  OR
- Restrictions imposed/voluntarily accepted on staff privileges, membership or employment

Based on What Grounds?

1. Incompetence, or gross or repeated deviation from the standard of care involving death or serious bodily injury to one or more patients, or in a dangerous or injurious manner

2. Use or prescription of controlled substance, dangerous drug or alcoholic beverages in a dangerous or injurious manner, or to the extent of impairment

3. Repeatedly excessive prescribing, furnishing or administering of controlled substances, or doing so without good faith effort at prior examination of the patient, etc.

4. Sexual misconduct with one or more patients during a course of treatment or an examination
1. Midwives are now covered by Section 805, and thus by all related reporting requirements and related penalties discussed above.

2. What are the Legal Implications for Hospitals and Their Leadership?
Unlike 805 reports, 805.01 reports are not disseminated to other hospitals.

Medical Board entitled to inspect and copy:
- Statement of charges
- Documents, medical charts, exhibits
- Opinions, findings, conclusions
- Certified copies of medical records

805.01 report does not replace 805 report; is additional

New Teeth in Section 805.01

Willful failure to report:
- “A voluntary and intentional violation of a known legal duty”
- Up to $100,000 per violation
- Enforcement action brought by any agency with jurisdiction (e.g., Medical Board if violator is a physician)
- May be unprofessional conduct by a non-reporting physician
Other (non-willful) failure to report:
- Up to $50,000 per violation
- Enforcement action brought by any agency with jurisdiction (e.g., Medical Board if violator is a physician)
- Apparently not considered unprofessional conduct by a non-reporting physician
- Enforcement body same as for willful violation
Factors

- Did failure cause harm to a patient?
- Did it create risk to patient safety?
- Did those responsible for reporting exercise due diligence?
- Did they know, or should they have known, report would not be filed?
- Prior failures to report?
- Small or rural hospital?

3. How Can Hospitals Mitigate Risk and Potential Liability?
Where Risk Reduction Starts

Education

- 805.01 reports often overlooked
- Awareness of deadlines, fines (including Chief of Staff)
- Calendaring system
- Remember midwives

A Very Common Pitfall

Do not allow reportability to drive decision-making

- Can make compliance more difficult — requires explanations
- Patient care cannot be at the mercy of reportability
  - Medical staff morale suffers
  - Ineffective action increases liability exposure
Takeaways

1. Sections 805 and 805.01 are different, although superficially similar — 805 applies when action is final; 805.01 applies in beginning stages

2. Most disciplinary recommendations will probably trigger Section 805.01

3. Section 805.01 now has “teeth” (fines up to $100,000, individual physician licensure action)

4. Best responses: education, report tracking systems, avoid undue emphasis on reportability in decision-making
The mission of the Medical Board is to **protect health care consumers** through the proper licensing and regulation of physicians and surgeons and certain allied health care professions and through the vigorous, **objective enforcement of the Medical Practice Act**, and to promote access to quality medical care through the Board's licensing and regulatory functions.
What has to be reported?
An 805 Report must be filed if one of the following actions occur:
- Denial or rejection of application
- Privileges, membership or employment revoked
- Restrictions imposed — 30 days
- Resignation, leave of absence, withdrawal/abandonment
- Summary suspension — 14+ days

When does an 805 report have to be reported?
An 805 Report must be filed within 15 days after the effective date of:
- The action to deny or reject an application
- The action to revoke
- The action to impose restrictions
- Imposition of a summary suspension
- Licentiate resigning, taking a leave of absence, withdrawing or abandoning the application
What is “medical disciplinary cause or reason?”

Medical disciplinary cause or reason, as defined in 805(a)(6), means that aspect of a licentiate's competence or professional conduct that is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

Who files the 805 report?

Any peer review body from:

- A health care facility or clinic licensed under Health and Safety Code, Division 2;
- A facility certified to participate in the Medicare program as an ambulatory surgical center;
- A health care service plan licensed under Health and Safety Code, Division 2;
Health Facility/Peer Review Reporting Requirements (805 Reports)

Who files the 805 report? (cont.)

Any peer review body from:

✓ A disability insurer that contracts with licentiates;

✓ A nonprofit medical/podiatric professional society having as members at least 25% of the eligible licentiates in the area in which it functions; or

✓ A committee organized by any entity consisting of or employing more than 25 licentiates of the same class that functions for the purpose of reviewing the quality of care provided by members or employees.
Who signs the 805 report?

Must be signed by the chief of staff of a medical or professional staff; other chief executive officer; the medical director or administrator of any peer review body; or chief executive officer or administrator of any licensed health care facility or clinic.
Health Facility/Peer Review Reporting Requirements (805.01 Reports)

What has to be reported?

An 805.01 Report must be filed if the peer review body makes a decision or recommendation to do one of the following:

- Deny or reject an application
- Revoke the privileges, membership or employment
- Impose restrictions — 30 days

What has to be reported? (cont.)

If any of these acts listed below may have occurred:

- Incompetence/gross or repeated deviation;
- Use of drugs/alcohol;
- Excessive prescribing/prescribing without a prior exam and medical reason; or
- Sexual misconduct with patients during a course of treatment or an examination.
When does an 805.01 have to be reported?

- **15 days** after a peer review body makes a final decision or recommendation, after a formal investigation

Definition of peer review body — same

Reporting official — same
805 vs. 805.01

- 805.01 — reported prior to the action being taken and prior to an 809 hearing
- 805.01 is only required for four violations; 805 is for anything related to medical disciplinary cause or action
- 805.01 is confidential and 805 is available to other peer review bodies
- Have to file an 805 report, even if an 805.01 report has been filed
Health Facility/Peer Review Reporting Requirements (805 and 805.01)

What are the penalties for failing to file an 805 and 805.01 report?

- $50,000 fine per violation
- Intentional or willful failure — $100,000 fine per violation

If the person who is required to file the 805 report is a physician, action can be brought by the Medical Board.

What Happens to the 805/805.01 Report?

- It is posted on the Board’s confidential website for authorized users
- It is considered a complaint and enters the complaint process
- Sent to Investigation
  - During this process, facility will usually receive a subpoena for the information on the 805 or 805.01 investigation
- If violations proven, then action is taken
805 Information for Credentialing

- In 2013, transitioned the former License Verification System (LVS) to the Health Facility/Peer Review Database and BreEZe license lookup
- Subscription is still required, but a fee is no longer necessary

805 Information for Credentialing (cont.)

- Use the Health Facility/Peer Review Database for information to comply with Business and Professions Code Section 805.5 — it includes all 805 information.
805 Information for Credentialing (cont.)

- Information maintained for 3 years or until:
  - The Board finds the report was without merit, or
  - A court finds the report was in bad faith and the licensee notifies the Board.

(if only for failure to complete records not available)
Overview

• Purpose of NPDB
• Data and General Information
• What’s New for Hospitals
  • Hospital Querying
  • Reporting and Attestation
• Resources and Questions

Purpose

Congress Created the NPDB in 1986:
• To improve quality of medical care in a way states could not handle
• To restrict incompetent physicians and dentists from moving without disclosure of prior performance
• To encourage effective professional peer review
• To deter fraud and abuse in the health care system
NPDB and Hospitals: A Shared Goal

• The NPDB and hospitals share the goal of providing quality care and ensuring patient safety.

• As front-line providers of health care, we understand your need to have access to tools, and resources to engage and retain a quality health care workforce.

• Reporting contributes to the completeness of the information in the NPDB, which adds value for all queriers who rely on the information.

• Insufficient reporting denies hospitals and other health care entities information on practitioners with real competency or conduct concerns.

General Provisions

Civil Liability Protection

• Immunity provisions in Title IV, Section 1921 and Section 1128E protect individuals, entities and their authorized agents from being held liable in civil actions for reports made to the NPDB unless they have actual knowledge that the information in the report is false.

• Health care entity professional review bodies, their members and their agents are immune from civil liability in most cases.
General Provisions (cont.)

Confidentiality

• Information reported to the NPDB is confidential, not available to the general public and may not be disclosed except as provided by law.

• Penalty of up to $21,916 per confidentiality violation.

Reports in the NPDB

NPDB Individual Reports by Type (N=1,294,192) 9/1/1990 — 12/31/2016

- State Licensure: 52.3%, N=676,284
- Medical Malpractice Payment: 33.2%, N=429,420
- Exclusion Action/Debament: 8.3%, N=107,230
- Judgment or Conviction: 2.3%, N=30,178
- Clinical Privileges: 1.8%, N=23,024
- Government Admin: 1.2%, N=15,234
- Health Plan: 0.6%, N=8,124
- DEA/Federal Licensure: 0.3%, N=3,353
- Professional Society: 0.1%, N=1,345
NPDB

Reported Professions

NUMBER OF NEW NPDB REPORTS SUBMITTED ON INDIVIDUAL SUBJECTS FROM 2010 – 2016 BY PROFESSION

- Physicians: 130,449
- Dentists: 25,729
- Physician Assistants: 6,461
- Advanced Practice Nurses: 7,567
- Chiropractors: 8,290
- Podiatrists: 5,393
- Optometrists, Opticians: 1,687
- Registered Nurses: 164,663
- Licensed Practical, Vocationa Nurses: 163,746
- Social Workers: 6,427
- Psychologists: 3,158
- Other Behavioral Health: 18,044
- Pharmacists, Pharmacy Technicians: 94,563
- Emergency Medical Technician: 7,550
- Nurse Aides, Nursing Assistants: 18,954
- Physical, Occupational, Respiratory, Speech, Therapists, Assistants: 15,118
- Other Technologists, Technician: 3,200
- Other Reported Professions: 37,141

Total: 648,439

Reports

NPDB

Querying and Reporting

HRSA Health Workforce
Who Reports and Queries

<table>
<thead>
<tr>
<th>ENTITY TYPE</th>
<th>REPORT</th>
<th>QUERY</th>
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<tbody>
<tr>
<td>Hospitals</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Health plans</td>
<td>✔</td>
<td></td>
</tr>
<tr>
<td>Other health care entities with formal peer review</td>
<td>✔</td>
<td></td>
</tr>
<tr>
<td>State agencies that license and certify health care practitioners and entities, including boards of medical and dental examiners</td>
<td>✔</td>
<td></td>
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<tr>
<td>State agencies administering or supervising state health care programs</td>
<td>✔</td>
<td></td>
</tr>
<tr>
<td>State law enforcement or fraud enforcement agencies (including state Medicaid fraud control units and state prosecutors)</td>
<td>✔</td>
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<tr>
<td>Federal licensing and certification agencies</td>
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<tr>
<td>Agencies administering federal health care programs, including private entities administering such programs under contract</td>
<td>✔</td>
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</tr>
<tr>
<td>Federal law enforcement officials and agencies (including Drug Enforcement Agency, HHS Office of Inspector General, and federal prosecutors)</td>
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<tr>
<td>Medical malpractice payers</td>
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<tr>
<td>Professional societies with formal peer review</td>
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<tr>
<td>Peer review organizations (excluding quality improvement organizations)</td>
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<td>Private accreditation organizations</td>
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<td></td>
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<tr>
<td>Quality improvement organizations</td>
<td>✔</td>
<td></td>
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<tr>
<td>Individual practitioners, providers, and suppliers (self-query only)</td>
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Required ✅ Not Authorized ❌ Optional ✖

Hospital Querying

**Must query on:** Health care practitioners when practitioners apply for staff appointments (courtesy or otherwise) or clinical privileges (including temporary privileges); every two years for practitioners on staff or with clinical privileges

**May query on:** Health care practitioners with whom the hospital has entered (or may be entering) employment or affiliation relationships
Hospital Querying (cont.)

- Centralized Credentialing
- Querying Through an Authorized Agent
- Delegated Credentialing
- (Hospitals May Not Delegate Responsibility)
- Continuous Query

Continuous Query

- A subscription service that notifies subscribers of new information on any of their enrolled practitioners within one business day of the NPDB’s receipt of the information
- Designed and developed to help meet new accreditation standards that require ongoing monitoring of practitioners
- Between 2010 and 2016, health care providers have enrolled more than 2.22 million practitioners
Hospital Reporting

Overview

Must report on: Physicians and dentists
- Adverse clinical privileges actions >30 days related to professional competence or conduct

May report on: Other practitioners
- Adverse clinical privileges actions >30 days related to professional competence or conduct

Hospital Reporting (cont.)

- Denials, reductions and restrictions of privileges
- Withdrawals and Non-renewals
- Investigations
  “While under investigation or in return for not conducting such an investigation”
- Summary suspensions
Professional Review Action

- Based on professional competence or professional conduct that adversely affects, or could adversely affect, patients
- Taken after a peer review activity to:
  - Determine whether the practitioner may have clinical privilege;
  - Determine the scope or condition of such privileges; or
  - Change or modify such privileges.
- Excludes any matter that does not relate to the competence or professional conduct of a health care practitioner.

Employment Action

- Is not based on the professional competence or professional conduct of an individual health care practitioner
- Does not include a decision on practitioner’s privileges
- Does not involve a peer review process
- Includes administrative actions such as:
  - Board certification expires and physician's privileges are automatically revoked
  - Failing to meet requisite number of training hours, resulting in privileges being suspended
Potential Hospital Sanctions

Failure to Report
Loss of immunity protections provided for professional review activities that occur during the three-year period and organization name published in the Federal Register.

Failure to Query
Plaintiff is allowed access to NPDB information on that practitioner for use in litigation against the hospital.

Attestation
Attestation

New Compliance Initiative

- **When**: Feb. 14, 2018
- **Who**: Hospitals
- **What**: Hospitals will affirm that they have reported all legally required actions to the NPDB.
- **Why**:
  - To educate entities about their legal obligation to report; and
  - To ensure they have reported all legally required reports to the NPDB.

Resources

**Help When You Need It — www.npdb.hrsa.gov**

- FAQs, brochures and fact sheets
- NPDB Guidebook
- Recorded webinars
- Instructions for reporting and querying
- Regulations
- Statistical data
- Research tools
- The Data Bank newsletter
- Customer Service Center
  - Call 800.767.6732
  - Email help@npdb.hrsa.gov
Contact Information

Claudia Rausch

National Practitioner Data Bank
Bureau of Health Workforce
Health Resources and Services Administration
U.S. Department of Health and Human Services

- Telephone: 301.945.3059
- Email: npdbpolicy@hrsa.gov

Thank You

David Perrott, MD, MBA, FACS
California Hospital Association
dperrott@calhospital.org

Lowell Brown
Arent Fox LLP
lowell.brown@arentfox.com

Kimberly Kirchmeyer
Medical Board of California
kimberly.kirchmeyer@mbc.ca.gov

Claudia Rausch
National Practitioner Data Bank
npdbpolicy@hrsa.gov

Jackie Garman
California Hospital Association
jgarman@calhospital.org
Questions

**Online questions:**
Type your question in the Q & A box, press enter

**Phone questions:**
To ask a question, press *1

Upcoming Programs

**Hospital Compliance Seminar**

**February 21, Sacramento**

This annual program provides hospital compliance officers with the practical guidance and information needed to stay compliant with increasingly complex health care regulations. All participants receive a free copy of CHA's updated *California Hospital Compliance Manual*. More information is available at calhospital.org/hospital-compliance.
Upcoming Programs

Health Policy Legislative Day
March 20 & 21, Sacramento

Join fellow hospital leaders in Sacramento to collectively share with state legislators how proposed legislation will impact their hospitals, patients and communities. Complete program information can be found at calhospital.org/legislative-day.

CHA Publications

California Hospital Compliance Manual
- Focuses on high-risk compliance issues and key components of an effective compliance plan
- Includes customizable model plan and index of key terms

EMTALA — A Guide to Patient Anti-Dumping Laws
- Covers several interpretations of the EMTALA obligations affecting:
  - On-call physicians
  - Medical screening exams
  - Dedicated emergency departments
  - Stabilization and transfer
- Includes new information on EMTALA in disaster situations

For more information, visit calhospital.org/publications
Thank You and Evaluation

Thank you for participating in today’s seminar. An online evaluation will be sent to you shortly.

For education questions, contact Amber McEwen at (916) 552-7578 or amcewen@calhospital.org.