UCLA Ronald Reagan Medical Center

PROFESSIONAL REPORTING MS 114

Manual	Medical Staff	***Effective Date***	04/21/2004
Policy #	MS 114	***Date Revised***	10/31/2018
Responsible Person	Director, Medical Staff Administration	***Next Scheduled Review***	10/31/2021

PURPOSE

To describe the process for complying with state (e.g., Medical Board of California) and federal (National Practitioner Data Bank) physician and health care provider-reporting obligations.

BACKGROUND

The Regents of the University of California is charged with implementing the malpractice reporting requirements for licensed physicians, including residents, set forth in Business and Professions Code section 801.01. The statute requires the University to report to the Medical Board of California ("Medical Board") an arbitration award or a civil judgment of any amount as well as settlements over $30,000 "for damages for death or personal injury caused by the licensee's alleged negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services." Reports to other licensing agencies are also required with respect to nurses and other licensed health care practitioners who are not physicians, but for settlements of lesser and varying amounts.

Reporting to the National Practitioner Data Bank ("Data Bank") is required when a payment is made for the benefit of a licensed health care provider if he/she is a named defendant in a lawsuit or sufficiently described in the complaint (or claim for damages if pre-litigation) and is not dismissed from the lawsuit prior to settlement or judgment and is identified or described in the settlement release. If these conditions are met, the practitioner must be reported regardless of the amount of the settlement.

The University of California Office of the President has the ultimate responsibility for assuring compliance with applicable malpractice reporting requirements and issuing reports to licensing agencies. Determinations concerning which individual health care practitioners will be named and amounts apportioned to those named in required reports (referred to as allocation decisions) are the responsibility of the campus allocation committee.

Reports must also be made to the Medical Board and/or Data Bank when certain adverse actions are taken by a peer review body, such as a medical staff, against a health care practitioner's clinical privileges or staff membership for a Medical Disciplinary Cause or Reason, in the case of Medical Board reporting, or based on the health care practitioner's professional competence or professional conduct that adversely affects, or could adversely affect the health or welfare of a patient, in the case of Data Bank reporting. Further, a report must also be made to the Medical Board when a peer review body, after formal investigation, makes a final decision or recommendation to take disciplinary action against certain health care practitioners based on specific categories of misconduct.

DEFINITIONS

A. "Licentiate" means physicians, surgeons, podiatrists, clinical psychologists, marriage and family therapists, clinical social workers, dentists, professional clinical counselors, licensed midwives, and physician assistants.

B. "Medical Disciplinary Cause or Reason" 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.

C. "Professional Review Action" means an action or recommendation of a health care entity: (1) taken in the course of professional review activity; (2) based on the professional competence or professional conduct of an individual health care practitioner which affects or could affect adversely the health or welfare of a patient; and (3) which adversely affects or may adversely affect the clinical privileges or membership in a professional society of the health care practitioner.

POLICY

Medical Malpractice Payments

A. California Law.

1. Reporting Thresholds.

(a) Medical Board of California, Osteopathic Medical Board of California, California Board of Podiatric Medicine and Physician Assistant Board:
"A settlement over thirty thousand dollars ($30,000) or arbitration award of any amount or a civil judgment of any amount, whether or not vacated by a settlement after entry of the judgment, that was not reversed on appeal, of a claim or action for damages for death or personal injury caused by the licensee's [i.e., physicians, osteopathic physicians, doctors of podiatric medicine and physician assistants] alleged negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services." (Section 801.01(a)(1).)

(b) Board of Behavioral Sciences:
"[A]ny settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's [i.e., marriage and family therapists, clinical social workers, clinical counselors and educational psychologists] negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services." (Section 801(b).)

(c) Dental Board of California:
"[A]ny settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's [i.e., dentists and dental assistants] negligence, error, or omission in practice, or rendering of unauthorized professional services." (Section 801(c).)

(d) Board of Registered Nursing:
"[A]ny settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's [i.e., registered nurses] negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services." (Section 801(e).)

(e) Reports must also be made to various other licensing agencies as to settlements or arbitration awards over three thousand dollars ($3,000) of a claim or action for damages for death or personal injury caused by the licensee's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional

services. Each licensing agency's website should be consulted for further information on reporting. (Section 801(a).)

2. Timing of Reports.
The above reports must be made within thirty (30) days after the written settlement agreement has been reduced to writing and signed by all parties thereto, within thirty (30) days after service of the arbitration award on the parties, or within thirty (30) days after the date of entry of the civil judgments.

B. Federal Law
If the University makes a payment of any amount in settlement of a medical malpractice claim against a licensed health care practitioner, a payment report is required to the Data Bank if the practitioner is (1) named or sufficiently described in a written claim (whether pre-litigation or during litigation), (2) still named when the agreement to settle is reached, and (3) named or sufficiently described in the settlement release (such that they are released thereby). If these conditions are met, the practitioner must be reported. The payment report allows for allocation of the payment and narrative description of the reasons for settlement. The Data Bank accepts the "entity shield" which provides that payment in a settlement of a claim that names only an institution or employer does not have to be reported.

Practitioner Reporting Laws - Adverse Actions on Privileges or Employment

A. California Law.

1. 805 Reports
An 805 report shall be filed with the appropriate licensing entity pursuant to Section 805 of the California Business & Professions Code when, **for any Medical Disciplinary Cause or Reason,** any of the following occurs as a result of an action of a peer review body:

- A Licentiate's application for medical staff privileges or membership is denied or rejected;

- A Licentiate's staff privileges, membership, or employment is terminated or revoked;

- Restrictions are imposed, or voluntarily accepted, on a Licentiate's staff privileges, membership or employment for a cumulative total of 30 days or more in any 12-month period; or

- A Licentiate is summarily suspended from medical staff privileges, membership or employment for more than 14 days.

An 805 report shall also be filed if after a Licentiate receives notice of a pending investigation initiated for a Medical Disciplinary Cause or Reason or notice that his/her application for membership or staff privileges is denied or will be denied for a Medical Disciplinary Cause or Reason, the Licentiate takes any of the following actions:

i) Resigns or takes a leave of absence from membership, medical staff privileges or employment;

ii) Withdraws or abandons an application for medical staff privileges or membership; or

iii) Withdraws or abandons a request for renewal of staff privileges or membership.

2. Timing of Filing 805 Reports

The 805 report must be made within 15 days after the effective date of denial, termination, restriction, resignation, withdrawal, leave of absence or other reportable event. In the case of summary suspension, the report must be made within 15 days following imposition of the suspension of staff privileges, membership or employment if the summary suspension remains in effect for a period in excess of 14 days.

3. Notice to the Licentiate of 805 Report

The Licentiate must be provided a copy of the 805 report and notice advising the Licentiate of his/her right to submit additional statements or other information, electronically or otherwise, to the board and that information submitted electronically will be publicly disclosed to those who request it, pursuant to Business and Professions Code Section 800.

4. 805.01 Reports

An 805.01 report (distinct from an 805 report) shall be filed with the appropriate licensing entity pursuant to Section 805.01 of the California Business & Professions Code when a peer review body makes a final decision or recommendation regarding disciplinary action, resulting in a final proposed action to be taken against a Licentiate, based on the peer review body's determination, following a formal investigation of the Licentiate, that any of the acts listed below may have occurred:

- Incompetence, or gross or repeated deviation from the standard of care involving death or serious bodily injury to one or more patients, in such a manner as to be dangerous or injurious to any person or the public;
- The use of, or prescribing for or administering to him/herself, any controlled substance; or use of any dangerous drug, or of alcoholic beverages, that is dangerous or injurious to the Licentiate, any other person, the public, or to the extent that such use impairs the ability of the Licentiate to practice safely;
- Repeated acts of clearly excessive prescribing, furnishing, or administering of controlled substances or repeated acts of prescribing, dispensing, or furnishing of controlled substances without a good faith effort prior examination of the patient and medical reason. In no event shall a provider lawfully treating intractable pain be reported for excessive prescribing.
- Sexual misconduct with one or more patients during a course of treatment or an examination.

5. Timing of Filing 805.01 Reports
The 805.01 report must be made within 15 days after a peer review body makes a final decision or recommendation regarding disciplinary action.

B. Federal Law.

1. Data Bank Reports for Adverse Actions Taken Against Clinical Privileges
Adverse actions on clinical privileges shall be reported to the Data Bank in those instances in which the actions are based on a physician's or dentist's professional competence or professional conduct that adversely affects, or could adversely affect, the health or welfare of a patient. The Medical Center shall report to the Data Bank the following adverse actions (and provide a copy of the report to the Medical Board):

- Professional Review Actions, based on reasons related to professional competence or conduct, that adversely affects clinical privileges of a physician or dentist for more than 30 days;

- A physician's or dentist's voluntary surrender of clinical privileges or restriction of clinical privileges: (1) while under investigation for possible professional incompetence or improper professional conduct, (2) in return for not conducting such an investigation or proceeding; or (3) in return for not taking a Professional Review Action that otherwise would be required to be reported to the Data Bank;

- A physician's or dentist's voluntarily withdrawal of an application for, or failure to apply for, renewal of medical staff appointment or clinical privileges while under investigation for possible professional incompetence or improper professional conduct, or in return for not conducting such an investigation or not taking a Professional Review Action.

While it is mandatory to report physicians and dentists for the above adverse actions, it is optional to report other health care practitioners.

2. Data Bank Reports for Summary Suspensions
A summary suspension must be reported to the Data Bank if it is: (1) in effect for more than 30 days; (2) based on the professional competence or professional conduct of the physician, dentist, or other health care practitioner that adversely affects, or could adversely affect, the health or welfare of a patient, and (3) the result of a Professional Review Action taken by the Medical Center.

If the physician, dentist, or other health care practitioner surrenders his or her clinical privileges during a summary suspension, regardless of whether the suspension has been confirmed by a hospital review body, that action must be reported to the Data Bank.

Clinical privilege actions are reportable once they are made final, but summary suspensions lasting more than 30 days are reportable even if they are not final.

3. Timing of Data Bank Reports
The report must be submitted to the Data Bank within 30 days from the date the action was taken or clinical privileges were voluntarily surrendered.

PROCEDURE

Medical Malpractice Payments

A. Claim/Lawsuit Filed
When a claim is made or a lawsuit is filed and served on the University alleging professional liability, Sedgwick Claims Management Services, the University's third party claims administrator, working in conjunction with the University of California Office of the President ("UCOP") and the Director of Risk Management, assigns the case to a defense attorney who contacts the involved provider(s) and explains the claims management and litigation process.

B. The Risk Management Allocation Committee ("RMC").

1. The Risk Management Committee, consisting of representation of practitioners from various medical specialties, reviews presented cases and advises as to the standard of care of the medical practitioners. The presentation consists of an overview by defense counsel and discussion with the practitioners involved in the care and the Chair of Department.

2. A subcommittee of the UCLA Medical Center's Medical Staff Risk Management Committee ("RMC"), which includes but is not limited to the Chief Medical Officer and the Chief Risk Officer (CRO), shall review each settlement, judgment or arbitration award and make recommendations to UCOP regarding the percentage of settlement dollars allocated to individuals (both physicians and non-physicians) for reporting purposes to the appropriate state licensing board.

3. The health care providers who have been identified as possible responsible parties in the malpractice case will be notified in writing by the CRO and will be offered an opportunity present his/her position on the case to the RMC subcommittee. The health care provider may supply a written statement if he/she chooses prior to the meeting. The individual may ask his/her clinical department chair or Ronald Reagan UCLA Medical Center department head to attend with him/her.

4. RMC or subcommittee members will consider the oral statements from providers at the meeting, and will review the medical record, the provider's written statement (if any) and other documentation provided by Risk Management in order to identify the responsible individual(s). The committee (or subcommittee) may, at its discretion, consult with the subject matter experts as needed.

5. Legal representation of individuals is not permitted.

6. If the RMC cannot reach a majority agreement as to the allocation percentages for reporting, the Chief Medical Officer will confer with the Dean of the David Geffen School of Medicine or designee (or Hospital Director for non-physicians) to reach a conclusion.

7. Nothing in the process of the RMC is to be construed as creating hearing rights under the Bylaws of the Medical Staff or other University policy.

C. Office of the President Makes Final Decision.

1. The conclusions and recommendations of the RMC shall be forwarded to UCOP, the office responsible for making the final decision for reporting.

2. If the RMC reached a conclusion that is in disagreement with a provider who submitted a written statement to the RMC, that written statement will be forwarded to UCOP with the RMC's recommendation, noting that the provider disagrees.

3. If UCOP disagrees with the recommendation made by the RMC, they may seek additional input or the advice of a selected Medical Director/Chief Medical Officer from a non-involved campus.

D. Special Circumstances

Situations which may not be attributable to a specific individual may include: systems errors, equipment malfunctions, non-predictable drug reactions, or circumstances where there is a settlement for reasons other than practice outside the standard of care. If the RMC determines that no individual is responsible and therefore should not be reported, it must explain in writing to UCOP why it believes no individuals should be reported or why less than 100 percent of the dollars should be allocated to individuals for reporting.

E. Preparing and Submitting the Report

If a judgment or settlement meets the reporting criteria, the CRO will coordinate with Sedgwick CMS and UCOP to prepare the required report(s). Such reports shall include the names, license numbers and name of specialty or sub-specialty of any reportable physician or health care professional designated as such by UCOP pursuant to the above procedures.

F. Data Bank Reporting

The same procedures shall be followed for any Data Bank reporting to the extent that reporting is required under the Data Bank rules. UCOP shall, in consultation with the Chief Medical Officer, and the CRO, determine whether or not a Data Bank report is also required.

G. Insurance Coverage and Consent to Settle

The University of California has a self-insurance program for medical professional liability which provides coverage to UC employed health care workers and trainees performing clinical activities consistent with the course and scope of their employment or training program at a UC owned hospital or an affiliated site. The University's coverage includes providing: (1) defense by an attorney hired by the University and (2) indemnity (payment of any settlement or judgment). The decision to settle ultimately lies with The Regents. However, input from the involved provider(s) is important and will be given consideration.

Adverse Actions

The Chief of Staff shall notify the Hospital Director upon the occurrence of any of the reportable adverse actions described above (see Practitioner Reporting Laws - Adverse Actions on Privileges Section). The Chief of Staff will work with the Chief Medical Officer, the Director of Medical Staff Administration, and the CRO to complete and timely submit any required 805 and/or 805.01 reports to the appropriate licensing entity (e.g., the California Medical Board) and any required Data Bank Reports.

Further Assistance

Questions regarding the reportability of a medical malpractice payment or an adverse action should be referred to the Director, Risk Management and/or University Legal Counsel.

REFERENCES

California Business & Professions Code §§ 800, 801, 801.01, 805, and 805.01
The Healthcare Quality Improvement Act of 1986
National Practitioner Data Bank Guidebook, updated April 2015
45 CFR §§ 60.3, 60.5, 60.7, 60.12

APPROVAL

Medical Staff Executive Committee:	10/25/2018
Governing Body:	10/31/2018