



UNIVERSITY POLICY

SUBJECT: HEALTH SERVICES **TITLE:** MEDICAL MISCONDUCT REPORTING

CODING: 00-01-40-50:00 **ADOPTED:** 01/13/92 **AMENDED:** 01/13/92

I. PURPOSE

To set policy and to delineate procedures to ensure the timely notification to the State of allegations or disciplinary actions arising out of professional misconduct by practitioners.

This policy is intended to implement Title IV of Public Law 99-660, the Health Care Quality Improvement Act of 1986, and the Professional Medical Conduct Reform Act of 1989 ("Act") and the regulations promulgated thereto.

II. ACCOUNTABILITY

Under the President and the Senior Vice President for Academic Affairs, the Deans of NJMS, RWJMS, SOM, NJDS, and SHRP, the Vice President and Chief Executive Officer for University Hospital, and the Vice President and Chief Executive Officer for Mental Health Services are accountable for ensuring compliance with this policy.

The Deans, Vice Presidents or designees of the individual health care facilities, the Medical Director and Associate Dean for Clinical Affairs - University Hospital, and the Director of Risk and Claims Management shall implement this policy.

III. APPLICABILITY

Both federal and state laws apply to "practitioners" employed by or affiliated with University health care facilities. Under the federal law, the Health Care Quality Improvement Act of 1986, practitioners include physicians, dentists, podiatrists, interns and residents. Under the state law, the Professional Medical Conduct Reform Act of 1989, practitioners include physicians, podiatrists, and medical interns and residents.

IV. DEFINITION

Health care facilities of UMDNJ include University Hospital, Community Mental Health Centers, University Physician Associates - New Jersey Medical School, Faculty Practice - Robert Wood Johnson Medical School, Faculty Practice - School of Osteopathic Medicine, Intramural Faculty Practice and Oral & Maxillofacial Surgery Faculty Practice Service - New Jersey Dental School, Nurse Midwifery, Nursing Faculty Practice, Department of Developmental and Rehabilitative Sciences - School of Health Related Professions, etc.

V. BACKGROUND

The intent of Public Law 99-660 is to improve the quality of medical care by encouraging physicians, dentists and other health care practitioners to identify and discipline those who engage in unprofessional behavior and to restrict the ability of incompetent practitioners to move from state to state without disclosure or discovery of the practitioners' previous damaging or incompetent performance. The law has two separate and distinct areas: 1) provision for immunity from civil damages suits for health care entities and medical staff members providing information to peer review bodies, and for actions taken as part of the peer review process; and 2) requirement for reporting of malpractice claims, settlements and judgments paid on behalf of practitioners and reporting of certain professional review actions taken by health care facilities and State Boards which license practitioners.

Title IV of the Public Law 99-660, the Health Care Quality Improvement Act of 1986, also established the National Practitioner Data Bank (NPDB), an information clearinghouse to collect and release certain information related to the professional competence and conduct of physicians, dentists and other health care practitioners.

In an effort to enhance the protection of the public and to close loopholes in existing practitioner reporting laws, the New Jersey Legislature enacted the Professional Medical Conduct Reform Act of 1989 ("Act"). The Act creates a Medical Practitioner Review Panel ("Review Panel") to serve as the repository for notices from health care facilities, health maintenance organizations and medical malpractice insurers regarding practitioner misconduct and disciplinary actions arising therefrom. The Review Panel serves in an advisory role to the Board of Medical Examiners ("Board") and is empowered to recommend disciplinary actions to the Board.

The Act also requires physicians, podiatrists, and medical interns and residents to notify the Board of any information which reasonably indicates that another practitioner has demonstrated an impairment, gross incompetence or unprofessional conduct which would present imminent danger to the patient or the public's health, safety and welfare, except when such information is obtained during the course of treatment of the affected practitioner.

VI. POLICY

A. Requirements:

1. Practitioners employed by or affiliated with University health care facilities shall become knowledgeable about the quality assurance procedures of their clinical department to ensure individual awareness and advance notification of potential patient care quality issues before they develop into reportable actions.
2. As required by both federal and state law, all disciplinary actions shall be reported to the NPDB and the Review Panel through the appropriate State licensing board in a timely manner, in full compliance with the timeframes set forth in each.
3. Matters not related to professional competence or professional conduct shall not be reported to the State or the NPDB.
4. Notification to the NPDB of an adverse action taken against a practitioner shall be made if the action taken against the employed or affiliated practitioner will reduce, suspend, revoke or deny clinical privileges for a period of thirty (30) days or longer. No such time limit exists for reporting adverse actions to the State. Adverse actions against a practitioner shall be reportable under the State law without exception for time restraints placed on the clinical privileges. (Refer to Exhibit A to determine what actions are reportable to the State and the NPDB.)

5. Malpractice information including any settlement, judgment or arbitration award, regardless of dollar amount, must be reported in accordance with both the State and Federal laws.

The amount of payment reported includes only the amount paid by the insurer for the benefit of a practitioner to the plaintiff in settlements on satisfaction of a written claim or judgment.

A waiver of debt is not considered a payment and should not be reported.

6. Requests for NPDB information must be made each time a physician or dentist or other health care practitioner applies for medical staff membership or clinical privileges.

All subsequent requests for NPDB information must be made every two (2) years thereafter or at the time of reappointment to the medical staff.

7. A practitioner shall notify the Board of information which reasonably indicates that another practitioner has demonstrated an impairment, gross incompetence or unprofessional conduct which would present an imminent danger to a patient or to the public health, safety or welfare, except when such information is obtained by virtue of a physician/patient relationship with the affected practitioner. Failure to notify the Board will subject the practitioner to disciplinary action and civil penalties.

8. Actions Reportable to the State and to NPDB:

In instances where the report contains information that must be reported under both the State Law and the Federal Law, the reporting entity should send the Medical Practitioner Review Panel the entire Adverse Action Report Form (See Exhibit B for a list of official forms and their availability) with all copies attached with the exception of the entity's own gold copy. The Review Panel will retain a copy and forward the white copy to the Data Bank and maintain the pink copy for use by the Department of Health. A copy of the Adverse Action Report will be provided to the Board Office and another copy will be mailed by the board to the practitioner involved.

9. Action Reportable to the State Only:

In those instances where a reporting entity believes that the action taken is not reportable under Federal Regulations, but is reportable under New Jersey Law, the Adverse Action Report must still be utilized. The entity should forward the reporting form to the Review Panel but should remove the top white copy. This will indicate to the Review Panel that the reporting entity does not believe the reported action is covered by the Federal requirements. The licensing Board will notify the practitioner involved that a report has been sent to the Review Panel as mandated by State Law.

- a. Leave of Absence

There is some question about the reporting requirements of the Data Bank relative to Leaves of Absence. There is no question, however, that a Leave of Absence is reportable under New Jersey Law. When reporting a Leave of Absence, use the method described in # 9 above.

b. Malpractice

Under the Data Bank regulations, a health care facility, unless it makes a payment on behalf of a physician in a malpractice suit, is not required to report a malpractice action. Under New Jersey Law, the facility is required to report the physician who is named in a malpractice suit in which the facility is a party and for which any settlement is made for judgment or arbitration award entered.

When completing the Adverse Action Report, as much information as is available in the relatively short time allotted for reporting to the Board, is to be provided. The reporting entity, in completing Section C, item 31, may include only that information as it deems appropriate for the Data Bank but should attach a thorough description, with whatever appropriate documentation is available, for use by the State Board of Medical Examiners.

The Board will be reviewing the Adverse Action Report; and in those instances where sufficient information has not been supplied concerning the incident, the Board will send the health care facility a request for Supplemental Report Form. This form requests detailed information and documentation relating to the reported action. The facility will have 30 days from the date of the request in which to return the supplemental form and the required documents.

The Supplemental Report Form will be used by the New Jersey Board of Medical Examiners only. If you submit information that is to be transmitted to the NPDB and you decide that you must revise or void that report, you must use the Adverse Action Report Form to make those changes.

B. Responsibilities:

1. The Dean or Vice President for each health care facility is responsible for:
 - a. designating an individual authorized to report the adverse action to the Medical Practitioner Review Panel and the NPDB only after he/she is satisfied that all quality assurance and due process provisions of the health care facility's Medical/Professional Staff Bylaws have been met.
 - b. creating a mechanism to query NPDB for adverse actions each time a practitioner applies for medical staff appointment, membership or clinical privileges.
 - c. forwarding copies of all adverse action reports to the Office of the Medical Director and Associate Dean for Clinical Affairs - University Hospital.
2. The Medical Director and Associate Dean for Clinical Affairs - University Hospital is responsible for:
 - a. consulting with the Medical/Professional Staff leadership to facilitate implementation of the policy provisions.
 - b. furnishing the requesting health care facility the official forms outlined in Exhibit B to comply with the policy's reporting requirements.
 - c. maintaining a file containing adverse action reports generated by all UMDNJ health care facilities on a centralized basis.

3. The Director of Risk and Claims Management is responsible for:
 - a. notifying the Review Panel of all medical malpractice settlements, judgments and arbitration awards, regardless of dollar value.
 - b. notifying the Review Panel of any termination, denial of coverage of any practitioner or surcharge assessed against a practitioner because of medical malpractice claims history.
 - c. notifying the named practitioner that a settlement has been reported to the Review Panel.
 - d. making claims records available to the Review Panel, upon request.
4. Practitioners employed by or affiliated with University health care facilities are responsible for:
 - a. following the quality assurance procedures of their clinical department and due process provisions of the health care facility's Medical/ Professional Staff Bylaws.
 - b. notifying the Board, as appropriate, of instances of impairment, gross incompetence or professional misconduct among fellow practitioners in conformance with this policy.

VII. PROCEDURE

The procedure described below is intended to provide guidance only and, does not replace the internal quality assurance, due process policies and procedures as described in the Medical/Professional Staff Bylaws of each health care facility.

A. Notification to the Review Panel and the NPDB

Performed by:

Dean, Vice President or Designee

Action Taken:

1. Receives information from the responsible Department Chairman/Director that an action is contemplated or necessary to reduce the likelihood of immediate injury or damage to the health or safety of any patient.
2. Initiates an inquiry and if warranted, refers the matter to the appropriate Medical/ Professional Staff Committee and Dean or Vice President for review and appropriate action.
3. Notifies the Review Panel of any disciplinary action taken or contemplated to be taken against a practitioner which would result in the revocation, restriction, limitation, resignation, reduction or termination of any clinical privileges.
4. Sets forth the facts and transmits the report, in writing, utilizing the Adverse Action Report Form (see Exhibit B) within seven (7) days of the action to the Review Panel for appropriate action.

Performed by:

Action Taken:

Dean, Vice President or Designee (cont.)

Report must include practitioner's name, status at UMDNJ and reason for report. A copy of this report is also sent to the Office of the Medical Director and Associate Dean for Clinical Affairs - University Hospital for central file maintenance.

Director of Risk and Claims Management

5. Notifies the Review Panel of all medical malpractice settlements, judgments and arbitration awards, regardless of dollar amount.

Reports must be in writing utilizing the Medical Malpractice Payment Report Form and transmitted within seven (7) days of the action.

6. Notifies the Review Panel of any termination, denial of coverage, of a practitioner or surcharge assessed against a practitioner because of medical malpractice claims history.
7. Notifies the named practitioner that a settlement has been reported to the Review Panel.
8. Makes available records of claims to the Review Panel upon request.

B. Requesting Information from the National Practitioner Data Bank

Performed by:

Action Taken:

Dean, Vice President or Designee

1. Requests adverse action reports and malpractice payment information from the Data Bank each time a practitioner applies for medical staff membership or clinical privileges. Utilizes the Request for Information Disclosure Form for this purpose.
2. Requests subsequent information at least every two (2) years thereafter for licensed individuals holding clinical privileges.

C. Notification to the Board of Medical Examiners (Board)

| <u>Performed by:</u> | <u>Action Taken:</u> |
|--|---|
| Practitioners (physicians, podiatrists, medical interns and residents) | 1. As appropriate, notifies the Board if he/she possesses information which reasonably indicates that another practitioner has demonstrated an impairment, gross incompetence or unprofessional conduct which would present an imminent danger to a patient or to the public health, safety or welfare. Such notification must include the name and address of all practice locations and the name of any other licensee directly associated with the practice. |

VIII. EXHIBITS

- A. Reportable Actions Checklist.
- B. Forms for the State and NPDB Reporting

By Direction of the President:

Vice President for Academic Affairs

**EXHIBIT A
DETERMINING REPORTABLE ACTIONS FOR
CLINICAL PRIVILEGES: SELECTED EXAMPLES**

| Action | Reportable to NJBME | Reportable to NPDB |
|---|------------------------|-----------------------|
| 1. Based on assessment of professional competence, a proctor is assigned to a physician or dentist and the practitioner must be granted approval before certain medical care is administered. | YES | YES |
| 2. Based on assessment of professional competence, a proctor is assigned to supervise physician or dentist, but proctor does not grant approval before medical care is provided by the practitioner | YES | NO |
| 3. As a matter of routine hospital policy, a proctor is assigned to a physician or dentist recently granted clinical privileges. | NO | NO |
| 4. Physician or dentist voluntarily restricts or surrenders his/her clinical privileges for personal reasons and professional competence and/or conduct is <u>not</u> under investigation. | NO | NO |
| 5. Physician or dentist voluntarily restricts or surrenders his/her clinical privileges, and professional competence or conduct <u>is</u> under investigation. | YES | YES |
| 6. Physician or dentist voluntarily restricts or surrenders his/her clinical privileges in return for not conducting an investigation of professional competence and/or conduct. | YES | YES |
| 7. Physician's or dentist's application for a medical staff appointment is denied based on professional competence or conduct. | NO | YES |
| 8. Physician or dentist is denied medical staff appointment or clinical privileges, because health care facility already has too many specialists in the individual's discipline. | NO | NO |
| 9. Physician's or dentist's clinical privileges are suspended, because he/she failed to complete a patient's chart in accordance with the health care facility's policy. | NO | NO |
| 10. Suspension of a physician's clinical privileges or medical staff membership due to a failure to complete medical records on time if the action has not compromised patient care. | NO | NO |
| 11. Denial of clinical privileges or medical staff membership because of the lack of need for the physician's services (i.e., closed medical staff or an exclusive contract.) | NO | NO |
| 12. Suspension, denial, or nonrenewal of clinical privileges or staff membership due to a failure to obtain or maintain a specified level of professional liability insurance. | NO | NO |

| Action | Reportable to NJBME | Reportable to NPDB |
|---|------------------------|-----------------------|
| 13. Denial of clinical membership or staff membership due to a failure to comply with threshold eligibility requirements such as board certification, or geographic requirements. | NO | NO |
| 14. Reduction or nonrenewal of privileges due to the physician's failure to meet new threshold requirements (i.e., board certification) or lapse in a requirement (i.e., Advance Cardiac Life Support Certificate). | NO | NO |
| 15. Reduction or nonrenewal of privileges due to the hospital's credentialing requirements, such as the physician's failure to admit a minimum number of patients to the health care facility. | NO | NO |

EXHIBIT B
FORMS FOR THE STATE AND NPDB REPORTING

All UMDNJ health care facilities must use specific forms to fulfill reporting requirements under this policy. The following forms may be obtained from the Office of the Medical Director and Associate Dean for Clinical Affairs - University Hospital (UH-D215A, NEWARK) 201-456-3665.

FORM

PURPOSE

Adverse Action Report

to notify to the State and the NPDB reportable adverse actions taken against a practitioner

Supplemental Report

to provide detailed information and documentation relating to the reported action to the State Board of Medical Examiners.