



National Practitioner Data Bank Healthcare Integrity and Protection Data Bank

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FACT SHEET FOR ATTORNEYS

Background of the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank

The National Practitioner Data Bank (NPDB) was established by Title IV of Public Law 99-660, the *Health Care Quality Improvement Act of 1986*, as amended (Title IV). Final regulations governing the NPDB are codified at 45 CFR Part 60. Responsibility for NPDB implementation resides with the Bureau of Health Professions, Health Resources and Services Administration, U.S. Department of Health and Human Services (HHS).

Title IV is intended to improve the quality of health care by encouraging State licensing boards, hospitals, professional societies, and other health care entities to identify and discipline those who engage in unprofessional behavior; and to restrict the ability of incompetent physicians, dentists, and other health care practitioners to move from State to State without disclosure or discovery of previous medical malpractice payment and adverse action history. Adverse actions can involve licensure, clinical privileges, professional society membership, and exclusions from Medicare and Medicaid.

The Secretary of HHS, acting through the Office of Inspector General (OIG) and the U.S. Attorney General, was directed by the *Health Insurance Portability and Accountability Act of 1996*, Section 221(a), Public Law 104-191, to create the Healthcare Integrity and Protection Data Bank (HIPDB) to combat fraud and abuse in health insurance and health care delivery. The HIPDB's authorizing statute is more commonly referred to as Section 1128E of the *Social Security Act*. Final regulations governing the HIPDB are codified at 45 CFR Part 61.

The HIPDB is a national data collection program for the reporting and disclosure of certain final adverse actions taken against health care practitioners, providers, and suppliers. The HIPDB collects information regarding licensure and certification actions, exclusions from participation in Federal and State health care programs, healthcare-related criminal convictions and civil judgments, and other adjudicated actions or decisions as specified in the regulations.

The NPDB and the HIPDB are primarily alert or flagging systems intended to facilitate a comprehensive review of the professional credentials of health care practitioners, providers, and suppliers. Eligible entities should use the information contained in the NPDB and the HIPDB in conjunction with information from other sources when granting clinical privileges or in employment, affiliation, or licensure decisions.

For more information on the NPDB and the HIPDB, see the *Fact Sheet on the National Practitioner Data Bank* and the *Fact Sheet on the Healthcare Integrity and Protection Data Bank*.

Confidentiality of Data Bank Information

Information reported to the NPDB and HIPDB is considered confidential and shall not be disclosed except as specified in the NPDB and HIPDB regulations. The *Privacy Act of 1974*, 5 USC §552a, as amended, protects the contents of Federal systems of records such as those contained in the NPDB and the HIPDB from disclosure, unless the disclosure is for a routine use of the system of records as published annually in the *Federal Register*.

The enabling statutes for the NPDB and the HIPDB do not allow disclosure to the general public. The general public may not request information that identifies a particular health care practitioner, provider, or supplier from the NPDB or the HIPDB.

The HHS OIG has the authority to impose civil money penalties on those who violate the confidentiality provisions of NPDB information. Persons or entities that receive information from the NPDB either directly or indirectly are subject to the confidentiality provisions specified in the NPDB regulations at 45 CFR Part 60 and the imposition of a civil money penalty of up to \$11,000 for each offense if they violate those provisions. When an authorized agent is designated to handle NPDB queries, both the entity and the agent are required to maintain confidentiality in accordance with Title IV requirements.

Availability of Data Bank Information

Entities entitled to participate in the NPDB are defined in the provisions of P.L. 99-660 and in the NPDB regulations. Those entitled to participate in the HIPDB are defined in Section 1128E and the HIPDB regulations. Eligible entities are responsible for meeting Title IV and Section 1128E querying and reporting requirements, as appropriate.

The NPDB and the HIPDB are committed to maintaining accurate information and ensuring that health care practitioners, providers, and suppliers are informed when medical malpractice payments, adverse actions, or health care-related judgments or convictions are reported concerning them.

The information from the NPDB is available to State licensing boards; hospitals and other health care entities; professional societies; certain Federal agencies; and others as specified in

the law. Hospitals are the only health care entities with mandatory requirements for querying the NPDB. Practitioners may self-query the NPDB regarding themselves at any time.

Federal and State government agencies and health plans are eligible to query the HIPDB. Health care practitioners, providers, and suppliers may self-query the HIPDB at any time.

Attorney Access

Attorneys are not permitted to query the HIPDB. However, a plaintiff's attorney or a plaintiff representing himself or herself (pro se) is permitted to obtain information from the NPDB under limited conditions:

- A medical malpractice action or claim must have been filed by the plaintiff against a hospital in a State or Federal court or other adjudicative body.
- The practitioner on whom the information is requested must be named in the action or claim.

Obtaining NPDB information on the specified practitioner is permitted only after evidence is submitted to HHS demonstrating that the hospital failed to submit a mandatory query to the NPDB regarding the practitioner named in the action. This evidence is not available to the plaintiff through the NPDB. Evidence that the hospital failed to request information from the NPDB must be obtained by the plaintiff from the hospital through discovery in the litigation process.

A plaintiff's attorney or plaintiff pro se must submit the following to the NPDB:

- A letter requesting authorization to obtain information.
- Evidence supporting the fact the hospital did not make a mandatory query to the NPDB regarding the practitioner named in the action or claim.
- Identifying information about the practitioner on whom the attorney or plaintiff pro se wishes to query.

Examples of evidence may include a deposition, a response to an interrogatory, and admission or other evidence of the failure of a hospital to request information. The plaintiff's attorney or plaintiff pro se must submit a separate request for information disclosure for each practitioner named in the action or claim.

The approval of a plaintiff's attorney or plaintiff pro se query is limited to a one-time-only disclosure; the approval of such a request does not allow a plaintiff's attorney or plaintiff pro se to obtain NPDB information on a continuing basis. Subsequent disclosures of NPDB information require the plaintiff's attorney or plaintiff pro se to initiate a new request. A fee is assessed when the NPDB discloses such information.

An approved query request entitles the plaintiff's attorney or plaintiff pro se to receive only that information available in the NPDB at the time the hospital was required to query but did not. It also includes information on any reports that were subsequently voided.

There are limitations on the use of information obtained by the plaintiff in a judicial proceeding. Specifically, the information obtained from the NPDB on the practitioner can only be used with respect to a legal action or claim against the hospital, not against the practitioner. Any further disclosure or use violates the confidentiality provisions of Title IV and subjects the plaintiff's attorney and/or the plaintiff to a civil monetary penalty of up to \$11,000.

Defense Attorney Requests for Information

Defense attorneys are not permitted access to the NPDB under Title IV or to the HIPDB because the defendant practitioner is permitted to self-query the NPDB.

Interpretation of NPDB-HIPDB Information

The information contained in the NPDB and the HIPDB is intended to direct discrete inquiry into and scrutiny of specific areas of a subject's licensure, professional society memberships, medical malpractice payment history, judgment or conviction report history, and record of clinical privileges. NPDB and HIPDB information is an important supplement to a comprehensive and careful review of a subject's professional credentials. The NPDB and the HIPDB are intended to augment, not replace, traditional forms of credentials review. As nationwide flagging systems, the Data Banks provide additional resources to assist State licensing boards, hospitals, other health care entities, health plans, and Federal and State Government agencies in conducting extensive, independent investigations.

Settlement of a medical malpractice claim may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the physician, dentist, or other health care practitioner. **Thus, a payment made in settlement of a medical malpractice action or claim shall not be construed as a presumption that medical malpractice has occurred.**

NPDB-HIPDB Assistance

For additional information, visit the NPDB-HIPDB web site at www.npdb-hipdb.com. If you need assistance, contact the NPDB-HIPDB Customer Service Center by e-mail at npdb-hipdb@sra.com or by phone at 1-800-767-6732 (TDD 703-802-9395). Information specialists are available to speak with you weekdays from 8:30 a.m. to 6:00 p.m. (5:30 p.m. on Fridays) Eastern Time. The NPDB-HIPDB Customer Service Center is closed on all Federal holidays.