

§ 46.5

Bank and State Licensing Boards under paragraphs (a)(2) and (c) of this section, VA shall provide written notice to the practitioner that a report will be filed with the National Practitioner Data Bank with a copy to the State Licensing Board in each State in which the practitioner is licensed and in the State in which the facility is located.

Subpart C—National Practitioner Data Bank Inquiries

§ 46.5 National Practitioner Data Bank inquiries.

VA will request information from the National Practitioner Data Bank, in accordance with the regulations published at 45 CFR part 60, subpart C, as applicable, concerning a physician, dentist, or other licensed health care practitioner as follows:

(a) At the time a physician, dentist, or other health care practitioner applies for a position at VA Central Office, any of its regional offices, or on the medical staff, or for clinical privileges at a VA hospital or other health care entity operated under the auspice of VA;

(b) No less often than every 2 years concerning any physician, dentist, or other health care practitioner who is on the medical staff or who has clinical privileges at a VA hospital or other health care entity operated under the auspice of VA; and

(c) At other times pursuant to VA policy and needs and consistent with the Act and Department of Health and Human Services Regulations (45 CFR part 60).

Subpart D—Miscellaneous

§ 46.6 Medical quality assurance records confidentiality.

Note that medical quality assurance records that are confidential and privileged under the provisions of 38 U.S.C. 5705 may not be used as evidence for reporting individuals to the National Practitioner Data Bank.

§ 46.7 Prohibitions concerning negotiations.

Reporting under this part (including the submission of copies) may not be

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the subject of negotiation in any settlement agreement, employee action, legal proceedings, or any other negotiated settlement.

§ 46.8 Independent contractors.

Independent contractors acting on behalf of the Department of Veterans Affairs are subject to the National Practitioner Data Bank reporting provisions of this part. In the following circumstances, VA will provide the contractor with notice that a report of a clinical privileges action will be filed with the National Practitioner Data Bank with a copy with the State Licensing Board in the State(s) in which the contractor is licensed and in which the facility is located: where VA terminates a contract for possible incompetence or improper professional conduct, thereby automatically revoking the contractor's clinical privileges, or where the contractor terminates the contract, thereby surrendering clinical privileges, either while under investigation relating to possible incompetence or improper professional conduct or in return for not conducting such an investigation or proceeding.

(Authority: 38 U.S.C. 5705)

PART 47—POLICY REGARDING REPORTING HEALTH CARE PROFESSIONALS TO STATE LICENSING BOARDS

Sec.

47.1 Definitions.

47.2 Reporting to State Licensing Boards.

AUTHORITY: Pub. L. 99-166, 99 Stat. 941; 38 U.S.C. 501.

SOURCE: 58 FR 48455, Sept. 16, 1993, unless otherwise noted.

47.1 Definitions.

(a) *Dentist* means a doctor of dental surgery or dental medicine legally authorized to practice dental surgery or medical dentistry by a State (or any individual who, without authority, holds himself or herself out to be so authorized).

(b) *Other health care professional* means an individual other than a physician or dentist who is licensed or otherwise authorized by a State to provide health care services (or any individual

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who, without authority, holds himself or herself out to be so licensed or authorized).

(c) *Physician* means a doctor of medicine or osteopathy legally authorized to practice medicine or surgery by a State (or any individual who, without authority, holds himself or herself out to be so authorized).

(d) *State* means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands and any other territories or possessions of the United States.

(e) *State Licensing Board* means, with respect to a physician, dentist or other health care practitioner in a State, the agency of the State which is primarily responsible for the licensing of the physician, dentist or practitioner to provide health care services.

(f) *Generally accepted standards of clinical practice* means reasonable competence in the clinical aspects of one's responsibilities, as well as the moral and ethical behavior necessary to carry out those responsibilities.

(g) *Separated licensed health care professional* means a licensed health care professional who is no longer on VA rolls, regardless of whether the individual left voluntarily or involuntarily and regardless of the reason why the individual left.

(h) *Currently employed licensed health care professional* means a licensed health care professional who is on VA rolls.

(i) *On VA rolls* means on VA rolls, regardless of the status of the professional, such as full-time, part-time, contract service, fee-basis, or without compensation.

(Authority: 38 U.S.C. 501, 7401-7405; Section 204(b) of Pub. L. 99-166, 99 Stat. 952-953; Pub. L. 99-660, 100 Stat. 3743)

[58 FR 48455, Sept. 16, 1993, as amended at 63 FR 23665, Apr. 30, 1998]

§ 47.2 Reporting to State Licensing Boards.

It is the policy of VA to report to State Licensing Boards any currently employed licensed health care professional or separated licensed health care professional whose clinical practice during VA employment so significantly failed to meet generally accepted

standards of clinical practice as to raise reasonable concern for the safety of patients. The following are examples of actions that meet the criteria for reporting:

(a) Significant deficiencies in clinical practice such as lack of diagnostic or treatment capability; errors in transcribing, administering or documenting medication; inability to perform clinical procedures considered basic to the performance of one's occupation; performing procedures not included in one's clinical privileges in other than emergency situations;

(b) Patient neglect or abandonment;

(c) Mental health impairment sufficient to cause the individual to behave inappropriately in the patient care environment;

(d) Physical health impairment sufficient to cause the individual to provide unsafe patient care;

(e) Substance abuse when it affects the individual's ability to perform appropriately as a health care provider or in the patient care environment;

(f) Falsification of credentials;

(g) Falsification of medical records or prescriptions;

(h) Theft of drugs;

(i) Inappropriate dispensing of drugs;

(j) Unethical behavior or moral turpitude;

(k) Mental, physical, sexual, or verbal abuse of a patient (examples of patient abuse include intentional omission of care, willful violation of a patient's privacy, willful physical injury, intimidation, harassment, or ridicule); and

(l) Violation of research ethics.

(Authority: 38 U.S.C. 501; 7401-7405; Section 204(b) of Pub. L. 99-166, 99 Stat. 952-953; Pub. L. 99-660, 100 Stat. 3743)

[63 FR 23665, Apr. 30, 1998]

PART 51—PER DIEM FOR NURSING HOME CARE OF VETERANS IN STATE HOMES

Subpart A—General

Sec.

51.1 Purpose.

51.2 Definitions.