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## Understanding the National Practitioner Data Bank and What a Report Means to You and Your License

By Jennifer Kirschenbaum, Esq, and Kate Maguire, Esq



Jennifer Kirschenbaum

Although the National Practitioners Data Bank (NPDB) could have a potentially vast impact on any healthcare practitioner's career, few

fully understand its setup, its implications, or what to do if they are reported to this electronic repository.

The NPDB was established by Congress as part of the Health Care Quality Improvement Act of 1986. The purpose of the NPDB is to allow increased access

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## Introducing the Third Annual Conference of the Association for Value-Based Cancer Care

By Burt Zweigenhaft, BS  
Chief Executive Officer and Chairman, OncoMed Onco360;  
Co-chair of the AVBCC Conference

As we know, the American healthcare system is going through exorbitant changes, changes that will affect all providers and all stakeholders in the cancer care ecosystem. The goal of the Association for Value-Based Cancer Care (AVBCC) is to bring together all of the

cancer care stakeholders in one unified meeting to discuss the many issues facing us today. One of the main objectives of the AVBCC Annual Conference is to be able to map out and help guide our members and attendees through the various changes in the US healthcare system.

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## Payer Negotiations Regarding Specialty Pharmacy: Implications for Oncology Practices

By Dawn Holcombe

Health plans and oncology practices alike are evaluating the use of specialty pharmacy as a resource for the delivery of cancer drugs. Specialty pharmacy organizations are creating large divisions to manage oncology spending

and to provide not only oral drugs but injectable and infused drugs as well.

Negotiations between oncology centers and health plans regarding the use of specialty pharmacy are not always easy. A practice may choose to use a local spe-

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## Understanding the National Practitioner... *Continued from page 1*

to reports of negative actions that have been taken against healthcare practitioners. Although the general public does not have access to the NPDB, licensing boards, professional societies, hospitals, and other healthcare entities do have access to these reports, and upon review, any one of these entities may decide not to work with a particular practitioner based on an NPDB report. Because the NPDB is national in scale, a practitioner cannot escape the repercussions of a negative action by attempting to practice in another state.

### Medical Malpractice and Adverse Actions

There are 2 basic areas in which the NPDB keeps reports on practitioners: medical malpractice payments and adverse actions. Whenever a medical malpractice payment is made on behalf of a practitioner, either in settlement or as the result of a judgment, the payment must be reported to the NPDB. This includes payments made by medical malpractice insurers on behalf of their insured. For an adverse action, certain actions must be reported to the NPDB, including but not limited to an action by a licensing board, by a hospital or other healthcare entity where a practitioner maintains privileges, by a professional society, or when Medicare or Medicaid excludes a practitioner from receiving benefits. Such actions are reportable because an authorized body has determined that a practitioner has experienced an event or determination capable of affecting that practitioner's ability to practice. When a formal determination is made to revoke a practitioner's license, that determination is also reported to the NPDB.

The following example illustrates the effect of an NPDB report. Dr Z,

an oncologist, maintains privileges at Hospital A. The head of oncology at Hospital A receives complaints from multiple patients that Dr Z was rude to the patients and their family members during their hospital stay. The head of oncology brings these complaints to Hospital A's board. The board makes a determination

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Practitioners often underestimate the impact or fail to educate themselves of the ramifications of National Practitioner Data Bank reporting. Once made, an NPDB report is difficult to unmake, and its implications may have a lasting impact on the subject practitioner, which is why practitioners should be advised that the time to challenge an NPDB report is before it is made.

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that Dr Z's manner of dealing with patients directly interferes with his ability to properly care for and treat them, and suspends Dr Z's privileges for 60 days. Hospital A now must report the suspension to the NPDB because the board determined that Dr Z's behavior interfered with his ability to properly care for and treat his patients.

It is important to note here that the NPDB allows reporting entities to create the reports themselves, and although the NPDB reviews reports, it will not investigate them for accuracy or make any changes to them. It is also important to note that NPDB reports do not expire; they are permanently maintained for the entirety of a practitioner's lifetime.

As a result of what he believes is unfair treatment from Hospital A, 2 years later Dr Z begins to seek employment elsewhere. He believes that his 60-day suspension was not related to his care and treatment of his patients at all, but instead resulted from a personal grudge that the chief of oncology held against him. Unfortunately, when Dr Z applies to Hospital B, Hospital B does a search of Dr Z's records in the NPDB. There, Hospital B finds the record of Hospital A's 60-day suspension of Dr Z 2 years ago. Based on this report alone, Hospital B elects to forego hiring Dr Z or to provide him with clinical privileges at its facility.

In this example, there are steps that Dr Z could have—and should have—taken to soften the blow of the NPDB report. When Hospital A initially reported Dr Z's suspension to the NPDB, the NPDB was required to send Dr Z a notice that it had received the report. Once he received the notice, Dr Z had the option of adding a statement to the report, which would have allowed him the opportunity to provide his point of view regarding his suspension. A practitioner posting an explanation of the circumstances cited in a report will often lend credibility and otherwise substantiate the action that was taken by that practitioner. Without such a response to a report, the practitioner is left without the benefit of the doubt, and action without explanation.

NPDB reports made regarding

medical malpractice payments may similarly impact a professional's career. Unfortunately, when deciding to file suit, plaintiff attorneys often bring actions against any and all of the practitioners listed as treating a patient. Thus if you are affiliated with a hospital and you saw a patient for an issue unrelated or ancillary to the central issue of a malpractice suit, you may still be named in the suit. Should your insurance carrier choose to settle during litigation, either you or your employer will be required to report the settlement to the NPDB. If you run your own practice, you will be afforded the opportunity to self-report, and may draft the report in the light most favorable to you. However, if your employer drafts the report, you should be fully apprised of the information contained in the report, and ensure that your employer provides a proper account of the events that led to the malpractice action.

### Disputing an NPDB Report

When a report is made and the information contained in the report is inaccurate, the practitioner may request that the reporting entity file a correction. If the reporting entity declines to change the report, the practitioner may initiate a dispute of the report through the dispute process. However, the dispute process does not serve as a means to protest a payment or to appeal any underlying reason of an adverse action. Neither the merits of a medical malpractice claim nor the appropriateness of—or the basis for—an adverse action may be disputed. In the first step of the dispute process, the reporting entity is notified that the practitioner disputes the report.

If the reporting entity declines to change the report or takes no action, the practitioner may then request that the Secretary of the US Department of Health and Human

Services (HHS) review the disputed report for accuracy of the factual information and to ensure that the information was required to be provided. Any request made to the Secretary of HHS for review should state, in writing, all of the facts that are in dispute. It should include substantiation of the practitioner's posi-

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tion, and provide any proof to support the practitioner's position. The request for review may not exceed 10 pages, and the review may result in one of the following determinations:

- 1 The NPDB report is accurate as submitted.
- 2 The NPDB report is inaccurate as submitted.
- 3 The issues in dispute are outside the scope of secretarial review.

The issues that are relevant to a secretarial review are not related to the fairness of the final determination that resulted in the report being generated at the NPDB level. Secretarial review is concerned only

with the information relayed about the previous determination based on facts. Because of this, secretarial review is not the right path for practitioners looking to challenge the underlying determination. Practitioners often imagine secretarial review as another bite into the apple of justice, another chance at vindication, or a challenge to the original underlying adverse action or malpractice matter. This is not the case at all, and practitioners should be advised that the time to challenge an NPDB report is before it is made.

### Conclusion

Although fighting to clear your name in a malpractice matter is often the road less traveled (because it is cheaper for the insurance company to settle in most instances), and fighting a hospital or administrative and/or government agency that renders an adverse decision may seem insurmountable, these processes do not just impact you and your career at the time. The determinations that are made and the records that are established as a result may follow you for the rest of your professional career, and even beyond. Take precautions, understand your risk, and protect yourself against an adverse report to the degree that you can. ●

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