

## MEDICAL BOARD STAFF REPORT

ATTENTION: Members, Medical Board of California  
 SUBJECT: National Practitioner Data Bank (NPDB) Information  
 STAFF CONTACT: Letitia Robinson, Research Specialist

### RECOMMENDED ACTION

Staff requests the Board review the additional information provided and direct staff to implement the recommendations specified below as an alternative to querying the NPDB.

As reported at the May 2012 Board meeting (see attached agenda item memo), the Board has initiated and will continue, on an annual basis, to request from the NPDB reports filed from peer review bodies for California physicians. Board staff will review these reports to determine if the Board has received all of the reports and to pursue investigations if it has not received reports.

Staff recommends outreach activities to ensure mandated reporters are informed of their responsibility to report certain events to the Board. As suggested at the May 2012 Board meeting, an article regarding Peer review reporting has been placed in the Board's summer Newsletter, and more could be done via meetings with reporters.

### BACKGROUND

At the February 3, 2012 Board Meeting, during "Public Comment on Items not on the Agenda" a suggestion was made to the Board. The suggestion encouraged the Board to look into the cost benefit analysis of querying the Data Bank every two years at the time of a physician's renewal.

Kimberly Kirchmeyer presented data on the feasibility of querying the NPDB for physician renewal candidates at the Board's May 4, 2012 meeting. The Board requested additional information including NPDB statistical data for review at the July 2012 Board meeting. The information below is in response to this request. (This item was deferred to the October Board meeting.)

### ANALYSIS

#### Peer Review Reporting

An annual review is performed in order for the Board to conduct a periodic reconciliation of peer review reports made to NPDB versus reports made to the Board. The Board has, for the last two years and proposes to do on an annual basis, requested from the NPDB reports filed from peer review bodies for California physicians. Board staff will review these reports to determine if the Board has received all of the reports and pursue investigations if it has not received the reports.

Board staff has reviewed the 2010 and 2011 peer review actions for California physicians reported to the NPDB. In 2010, the Board received all peer review reports that were received by the NPDB. In 2011, there was one peer review report that was submitted to the NPDB but was not reported to the Board. Board staff has requested this report from the NPDB and will investigate the action taken against the licensee. Board staff will also investigate why the report was not made to the Board.

The 2010 and 2011 reports from NPDB did not include any physician peer review actions from

these actions are important to know about in order to protect California consumers. However, if the state for which the report was made did not take disciplinary action, it may not be worth the resources it would take for the Board to investigate. It is difficult to prosecute a case in another state, and if the other state did not take action, it would be much more difficult to attain the clear and convincing evidence standard.

For the Board to investigate such an action, it may require Board investigators to travel to other states. This is especially difficult with the requirement that all out-of-state travel be approved by the Governor's Office. An out-of-state investigation may also require the Board to obtain out-of-state approval from the Governor's Office and incur costs to bring witnesses to California. This is provided that the witness agrees to testify because the Board cannot compel a witness to come to California to testify. The Board's subpoenas are not enforceable outside of California and obtaining witnesses and medical records may be problematic as the Board could not issue a subpoena. California consumers may be better served with having resources expended on physicians who are currently practicing in California.

The chart below shows the NPDB and MBC Peer Review reporting requirements. The biggest difference in the reporting requirements is the NPDB requires reporting actions that adversely affect privileges in excess of 30 days. The Board requires reporting of suspension in excess of 14 days and restrictions imposed for a cumulative total of 30 days or more for any 12-month period.

NPDB and MBC Peer Review Reporting Requirements

<i><b>NPDB</b></i>	<i><b>MBC</b></i>
Professional review action, based on reasons related to professional competence or conduct, adversely affecting clinical privileges for a period <u>longer than 30 days</u> including revocation, denial, non-renewal, and suspension. Voluntary surrender or restriction of clinical privileges while under, or to avoid, investigation.	Peer Review actions, based on medical disciplinary cause or reason, when clinical privileges are denied or rejected; terminated or revoked; and when restrictions are imposed for a <u>cumulative total of 30 days or more</u> for any 12-month period. [B&P805(b)]  Licensee resigns or take a leave of absence while under investigation; Licensee withdraws application or renewal of privileges while under investigation [B&P805(c)]  Suspension in effect in excess of 14 days – [B&P805(e)]

The chart below shows the NPDB and MBC sanctions for failing to report Peer Review actions. The NPDB informed the Board that no sanctions have been levied against any entity in the last ten years. The Board has levied civil penalties for six cases of failure to report Peer Review actions within the past ten years. The penalties in these cases ranged from \$5,000 to \$50,000 as some of these penalties were assessed prior to the increase in the amount of fines. SB 16 Figueroa (Statutes 2001, Chapter 614) increased the amount of the fine for a willful failure to report Peer Review actions from \$10,000 to \$100,000 and increased the amount of the fine for any failure to report from \$5,000 to \$50,000.

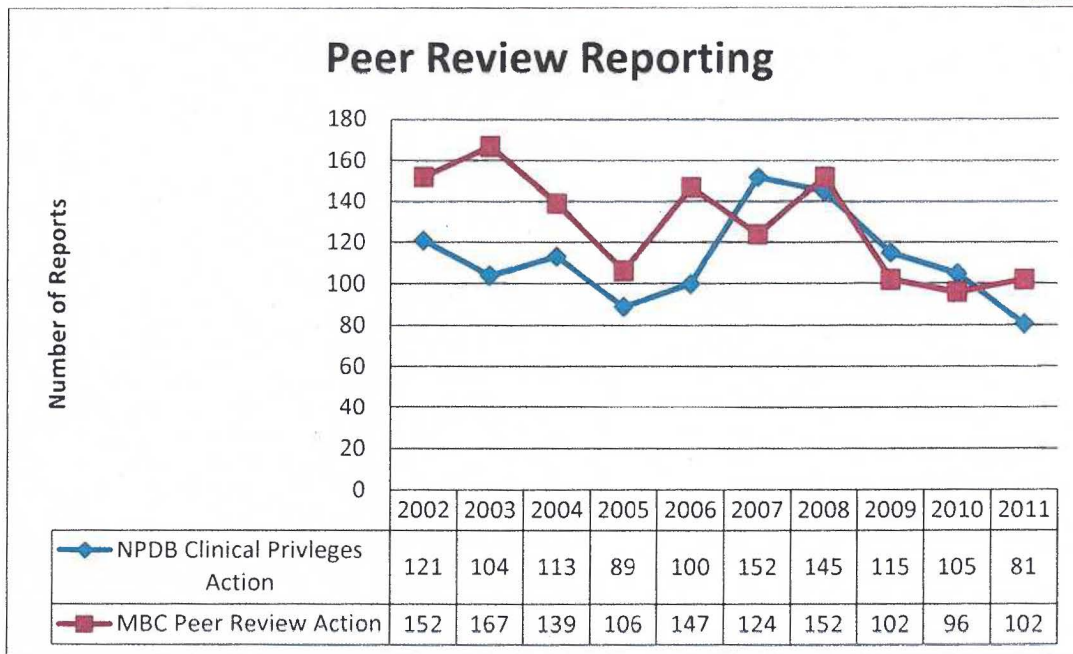


## NPDB and MBC Sanctions for Failing to Report Peer Review Actions

<i>NPDB</i>	<i>Sanctions Issued in Years 2002-2011</i>	<i>MBC</i>	<i>Sanctions Issued in Years 2002-2011</i>
The entity will be published in the <i>Federal Register</i> and will lose immunity under the provisions of Title IV with respect to professional review activities for a period of 3 years.	None	<p>A willful failure to report: person designated to report may be fined up to \$100,000. [B&amp;P 805(k)]</p> <p>Any failure to report: person designated to report may be fined up to \$50,000. [B&amp;P 805(l)]</p>	Six

The following graph shows NPDB and MBC peer review reporting for the past 10 calendar years. The Board shows a higher number of reports than the NPDB in 7 of the 10 reporting years. Further, the NPDB peer review reports include reports of change in action of the reporting entity and restoration or reinstatement by the reporting entity as separate reports. The NPDB methodology of reporting is different than MBC reporting because MBC only counts the initial peer review report. The Board's data does not include any supplemental reports it receives nor does it include any restoration/reinstatement in the data reporting.

For example in 2011, the NPDB reported receipt of 81 cases of Peer Review action against physicians in California. Of the 81 reports, seven were reports of restoration/reinstatement and nine were supplemental reports to an earlier 2011 report. These 16 reports would not be reflected in the Board's 2011 data because the Board only counts the report on its initial reporting. Therefore, only 65 of the 81 reports from the NPDB would be included in the MBC reports. However, in 2011 the Board reported 102 peer review reports. This is 37 more *initial* reports than what was reported to the NPDB.



#### Medical Malpractice Reporting

Assembly Bill 1070 Hill (Statutes 2009, Chapter 505) included amendments to Business and Professions Code § 801.01 – Report of Settlement or Arbitration Award. Previously, the law stated the failure of the licensee or his or her counsel to report the settlement or arbitration award was a public offense punishable by a fine from \$50 to \$500 and knowing and intentional failure to comply was punishable by a fine from \$5,000 to \$50,000. AB 1070 authorizes penalties for all reporters and states failure to substantially comply with the reporting requirements in B&P Code § 801.01 is a public offense punishable by a fine from \$500 to \$5,000. AB 1070 also added language to B&P Code § 801.01 (b)(3) to further clarify that the University of California System, as a self-insured agency, is required to report settlements and arbitration awards.

The charts below show the difference in NPDB and MBC Medical Malpractice reporting. The NPDB requires any and all payment claims in any amount be reported. The Board requires malpractice settlements over \$30,000, and judgments or arbitration awards of any amount be reported.

#### Difference in NPDB and MBC Medical Malpractice Reporting

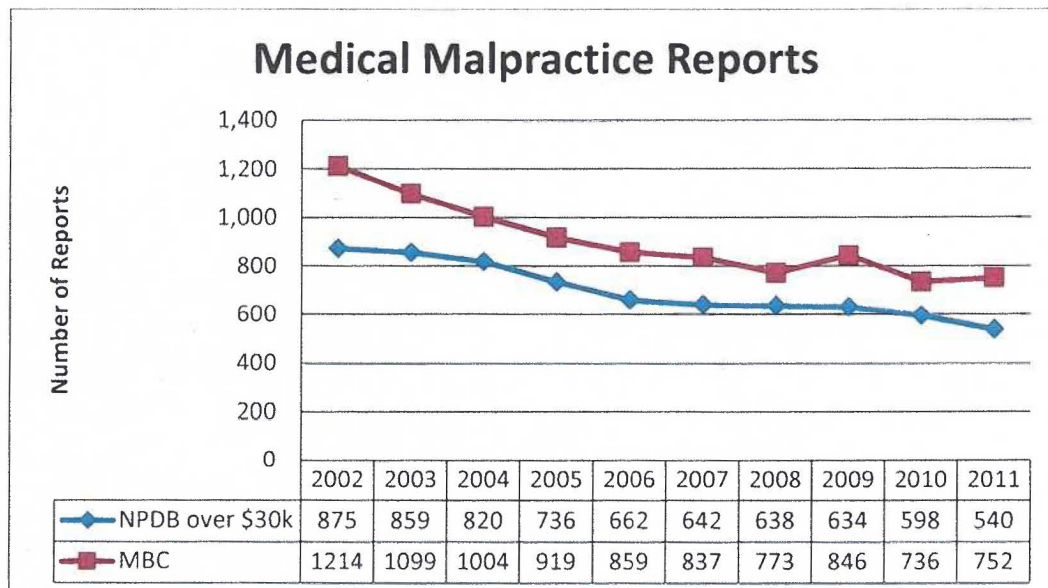
<i><b>NPDB</b></i>	<i><b>MBC</b></i>
Payment resulting from written claim or judgment.	Malpractice settlements over \$30,000; and judgments or arbitration awards of any amount. [B&P 801.01 (a)(1)(2)]

The charts below shows the sanctions imposed for failing to report medical malpractice payments to the NPDB and MBC. According to the NPDB, there has not been a penalty assessed in the last ten years for failure to report medical malpractice payments. The Board has also not levied any sanctions against any entity for failure to report medical malpractice payments.

## Sanctions for Failing to Report Medical Malpractice Payments to the NPDB and MBC

<i>NPDB</i>	<i>Sanctions Issued 2001-2011</i>	<i>MBC</i>	<i>Sanctions Issued 2001-2011</i>
A civil money penalty up to \$11,000 for each payment involved.	None	Failure to substantially comply with the State's reporting requirement is a public offense punishable by a fine ranging from \$500 to \$5,000. [B&P 801.01(f)]	None

The graph below shows NPDB and MBC medical malpractice payment reporting for the past 10 calendar years. The Board shows a higher number of reports than the NPDB in all 10 reporting years. The graph shows the decline of malpractice payment reports to the Board is similar to the decline of these reports to the NPDB. The Board requires malpractice settlements over \$30,000 and judgments/arbitration awards of any amount be reported to the Board. The graph below only shows the reports from the NPDB that are over \$30,000 to compare those of the same type of reports to the MBC.

Actions Reportable to the Healthcare Integrity and Protection Data Bank (HIPDB) and MBC

In addition to actions reported by the NPDB, HIPDB also receives reports. Below is a chart that shows the actions that are reported to HIPDB and MBC.



Reporting Organization	Reportable Action*	Are Reports Required?	
		To HIPDB	To MBC
Federal, State, and Local Prosecutors, Law Enforcement and Investigative Agencies	Criminal convictions, civil judgments (excluding those resulting from medical malpractice), injunctions, and <i>nolo contendere</i> /no contest pleas related to delivery of a health care item or service	Yes, must report	Yes, licensee must report: felony indictments; conviction of felony or misdemeanor. Fine up to \$5,000 for not reporting (B&P 802.1).  District Attorney must report filing of felony charges; Clerk of the Court must report criminal convictions (B&P 803.5)
Federal and State Licensing or Certification Agencies	Final adverse actions related to the delivery of a health care item or service	Yes, must report	No report required
Federal and State Government Agencies	Exclusions from participating in Federal or State health care programs	Yes, must report	No report required (however, MBC obtains information from these entities)
Federal and State Government Agencies and Health Plans	Other adjudicated actions or decisions related to the delivery of a health care item or service	Yes, must report	No report required

\* Subject of Report - Health Care Practitioners, Providers, and Suppliers

Update on NPDB Merger

Currently, when querying the NPBD there are two reports requested and there is a fee for each of the reports. These reports are the NPBD and the HIPDB. The data bank anticipates the NPBD and the HIPDB reports will be merged into the NPDB report by the end of 2012. The data bank could not confirm the fee for a query after the merger but stated it is probable that the current NPDB query fee would be increased.

MEDICAL BOARD STAFF REPORT

May 3, 2012

ATTENTION: Members, Medical Board of California  
SUBJECT: Data Bank Query for Physicians Renewal Candidates  
STAFF CONTACT: Letitia Robinson, Research Specialist

**Recommended Action**

Staff recommends the Board review the analysis and recommend that staff not pursue either a continuous query or a one-time query of the Data Bank for physician renewal candidates.

**Background**

At the February 3<sup>rd</sup> Board Meeting, during "Public Comment on Items not on the Agenda" a suggestion was made to the Board. The suggestion encouraged the Board to look into the cost benefit analysis of querying the Data Bank every two years at the time of a physician's renewal.

This recommendation stemmed from a complaint made by Public Citizen, a Washington, D.C. consumer advocacy group, to the Governor of California. The complaint alleged the Board failed to take disciplinary action against 672 of its licensed physician and surgeons (alleged 710 physicians but 38 represent osteopathic physicians), all of whom were disciplined by California health care organizations, mainly hospitals. This information was based on an analysis of the Data Bank Public Use Data File from September 1990 through the end of 2009.

**Analysis**

Data Bank Information

The Data Bank, consisting of the National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB), is a confidential information clearinghouse created by Congress to improve health care quality. The Data Bank does not disclose information on a specific practitioner to the general public. Authorized entities may query NPDB, HIPDB, or both.

The Data Bank offers two types of queries: one-time or continuous. For a one-time query, the name of the practitioner is provided to the Data Bank Web site and a query response is received within four hours. The report is available for about 45 days after the query. The current fee for each one-time query is \$4.75 per practitioner for each report per year. If both the NPDB and the HIPDB were queried, the cost would be \$9.50 per physician per year. For a continuous query, the initial query is processed; then continuous query automatically send alerts on any new reports or changes to reports on all enrolled practitioners for a 12-month period. The current fee for each continuous query is \$3.25 per practitioner for each report per year. If both the NPDB and the HIPDB were queried, the cost would be \$6.50 per physician per year.

Board's current use of Data Bank reports

Currently, the Board only conducts queries to the Data Bank for some at the initial licensing process (those licensed in another state), in some cases during an enforcement investigation,



and on all reinstatement cases. Most of the information that is provided by the Data Bank is already acquired by the Board through the fingerprinting process for criminal record query, Federation of State Medical Boards query, American Medical Association, and through reporting requirements by California law.

Existing California law, Business and Professions (B&P) Code §801.01, requires reporting to the Board of arbitration awards, civil judgments and settlements over \$30,000 when a claim or action is based on a licensee's alleged negligence, error, or omission in rendering services. The Data Bank requires all such awards, judgments, or settlements of any amount be reported.

B&P Code §805 requires a peer review body to provide a written report (805 reports) to the Board when privileging actions have been taken against its licensees including terminations or revocations, suspensions for 15 days or more, restrictions on staff privileges for 30 days or more, etc. The Data Bank requires Health Care Entities to report privileging actions affecting clinical privileges for a period longer than 30 days. Board staff did a comparison of the Data Bank Public Use Data from September 1990 through the end of 2009 and found that approximately 20 reports of privileging actions were submitted to the Data Bank but an 805 report was not filed with the Board. This amounts to about one Data Bank report per year where an organization failed to provide the Board with an 805 report.

#### Board Options for Querying the Data Bank

The Board was encouraged to look into the cost benefit analysis of querying the Data Bank every two years at the time of a physician's renewal. If the Board decides to query the Data Bank and increase physician's renewal fee to cover the cost, this would require a change in law.

The Board processes approximately 61,735 physician renewals each year. If the Board decided to do a one-time query for both Data Bank reports (\$9.50) at the time of renewal, the fiscal impact would be:

<b>Board Cost</b>	<b>FY 1</b>	<b>FY 2</b>	<b>Ongoing</b>
Staff Services	\$190,207	\$180,207	\$180,207
Data Bank Reports	586,482	586,482	586,482
Supplies/Equipment	123,470	123,470	123,470
<b>Total</b>	<b>\$900,159</b>	<b>\$890,159</b>	<b>\$890,159</b>

FY 1 Staff Services is a higher amount because of the work involved in setting up the initial program. Staff would be required to request, print, and review each report. In reviewing the report, staff would determine if it is necessary to open an enforcement case. Reports would be filed and maintained according to an adopted retention schedule.

Data Bank Query for Physicians Renewal Candidates

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If the Board decided to conduct continuous query for both Data Bank reports (\$6.50), the fiscal impact would be:

<b>Board Cost</b>	<b>FY 1</b>	<b>FY 2</b>	<b>Ongoing</b>
Staff Services	\$ 360,414	\$ 60,069	\$ 60,069
Data Bank Reports	849,395	849,395	849,395
Supplies/Equipment	261,340	20,000	20,000
Total	\$1,471,149	\$929,464	\$929,464

In FY 1 Staff Services is a higher amount because of the work involved in setting up the initial program. Staff would be required to request, print, and review each report. In reviewing the report, staff would determine if it is necessary to open an enforcement case. Reports would be filed and maintained according to an adopted retention schedule. In FY 2 the cost would decline for staff services and supplies/equipment because the Board would only receive subsequent reports.

Based upon this initial analysis of the information provided by the Data Bank to the Board, the benefit for obtaining data at renewal or on a continuous basis may not be cost effective. An analysis of the data provided by the Data Bank pursuant to the Public Citizen report shows that less than five additional reports per year might be received, and these may not rise to the level of discipline. The cost effectiveness of this option is not supported.

As an alternative, staff has already initiated an annual request to the Data Bank of reports filed from peer review bodies to determine if the Board has received all of those reports and to pursue an investigation if it has not received the reports.