



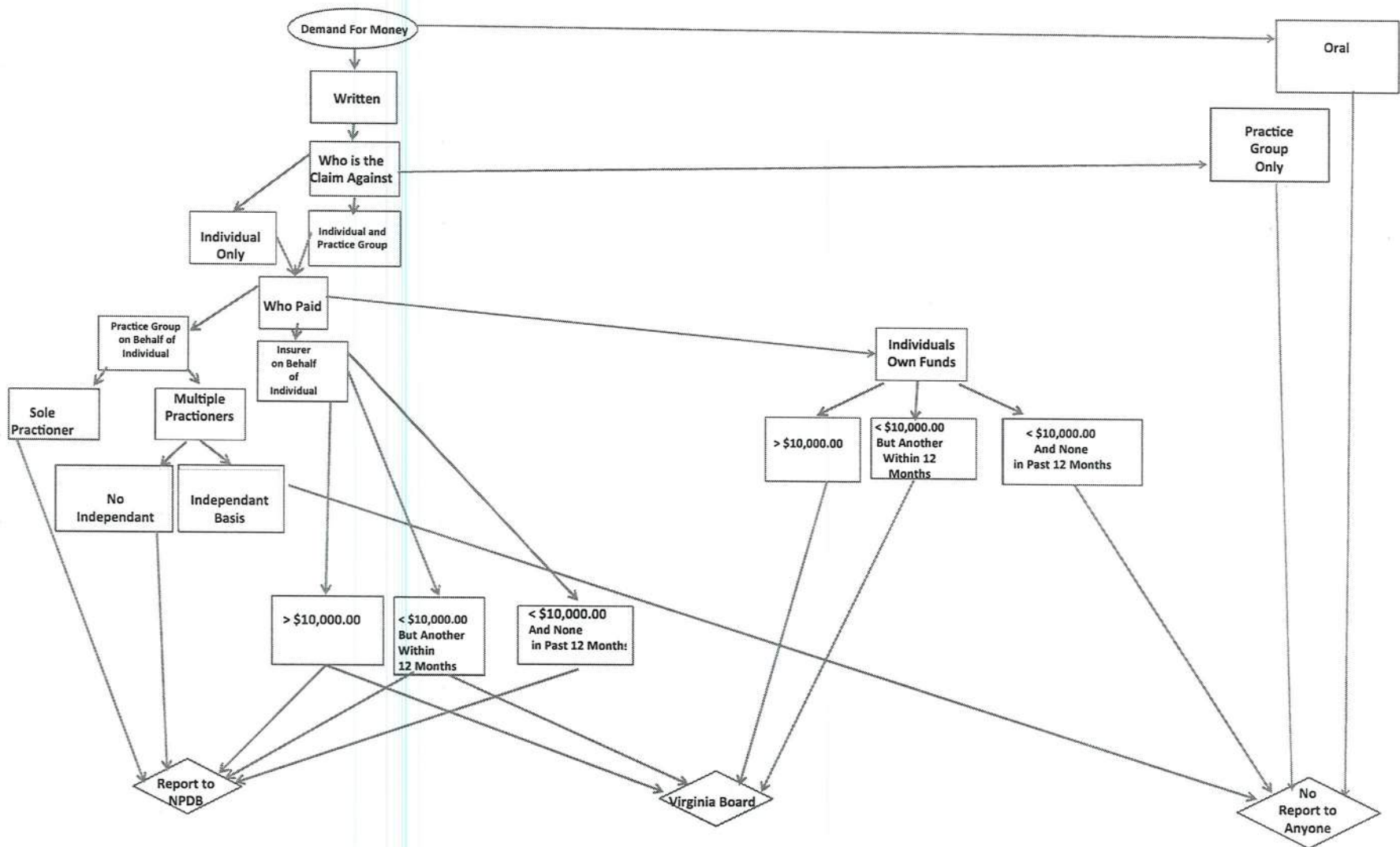
OMIC

**“Oh no!
Who needs to
know?”**

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OPHTHALMIC MUTUAL
INSURANCE COMPANY
(A Risk Retention Group)



This handout contains the Virginia state laws that govern physician reporting of malpractice payments and also excerpts from the National Practitioner Data Bank Guidebook on reporting malpractice payments.

VIRGINIA STATE LAW REGARDING REPORTING

1. Definitions
2. Further reporting requirements; civil penalty; disciplinary action.
3. Certain data required
4. Competency assessments of certain practitioners
5. Elements of a Competency Assessment
6. Reporting of medical malpractice judgments and settlements
7. Noncompliance or falsification of profile

1. Definitions.

As used in this chapter, unless the context requires a different meaning:

...

"Medical malpractice judgment" means any final order of any court entering judgment against a licensee of the Board that arises out of any tort action or breach of contract action for personal injuries or wrongful death, based on health care or professional services rendered, or that should have been rendered, by a health care provider, to a patient.

"Medical malpractice settlement" means any written agreement and release entered into by or on behalf of a licensee of the Board in response to a written claim for money damages that arises out of any personal injuries or wrongful death, based on health care or professional services rendered, or that should have been rendered, by a health care provider, to a patient.

Va. Code Ann. § 54.1-2900.

<http://law.lis.virginia.gov/vacode/title54.1/chapter29/section54.1-2900/>

2. Further reporting requirements; civil penalty; disciplinary action.

A. The following matters shall be reported within 30 days of their occurrence to the Board:

1. Any disciplinary action taken against a person licensed under this chapter in another state or in a federal health institution or voluntary surrender of a license in another state while under investigation;
2. Any malpractice judgment against a person licensed under this chapter;
3. Any settlement of a malpractice claim against a person licensed under this chapter; and

4. Any evidence that indicates a reasonable probability that a person licensed under this chapter is or may be professionally incompetent; has engaged in intentional or negligent conduct that causes or is likely to cause injury to a patient or patients; has engaged in unprofessional conduct; or may be mentally or physically unable to engage safely in the practice of his profession.

The reporting requirements set forth in this section shall be met if these matters are reported to the National Practitioner Data Bank under the Health Care Quality Improvement Act, 42 U.S.C. § 11101 et seq., and notice that such a report has been submitted is provided to the Board.

B. The following persons and entities are subject to the reporting requirements set forth in this section:

1. Any person licensed under this chapter who is the subject of a disciplinary action, settlement, judgment or evidence for which reporting is required pursuant to this section;

2. Any other person licensed under this chapter, except as provided in the protocol agreement entered into by the Medical Society of Virginia and the Board for the Operation of the Impaired Physicians Program;

3. The presidents of all professional societies in the Commonwealth, and their component societies whose members are regulated by the Board, except as provided for in the protocol agreement entered into by the Medical Society of Virginia and the Board for the Operation of the Impaired Physicians Program;

4. All health care institutions licensed by the Commonwealth;

5. The malpractice insurance carrier of any person who is the subject of a judgment or settlement; and

6. Any health maintenance organization licensed by the Commonwealth.

C. No person or entity shall be obligated to report any matter to the Board if the person or entity has actual notice that the matter has already been reported to the Board.

D. Any report required by this section shall be in writing directed to the Board, shall give the name and address of the person who is the subject of the report and shall describe the circumstances surrounding the facts required to be reported. Under no circumstances shall compliance with this section be construed to waive or limit the privilege provided in § 8.01-581.17..

E. Any person making a report required by this section, providing information pursuant to an investigation or testifying in a judicial or administrative proceeding as a result of such report shall be immune from any civil liability or criminal prosecution resulting therefrom unless such person acted in bad faith or with malicious intent.

F. The clerk of any circuit court or any district court in the Commonwealth shall report to the Board the conviction of any person known by such clerk to be licensed under this chapter of any (i) misdemeanor involving a controlled substance, marijuana or substance abuse or involving an act of moral turpitude or (ii) felony.

G. Any person who fails to make a report to the Board as required by this section shall be subject to a civil penalty not to exceed \$5,000. The Director shall report the assessment of such civil penalty to the Commissioner of the Department of Health or the Commissioner of Insurance at the State Corporation Commission. Any person assessed a civil penalty pursuant to this section shall not receive a license, registration or certification or renewal of such unless such penalty has been paid.

H. Disciplinary action against any person licensed, registered or certified under this chapter shall be based upon the underlying conduct of the person and not upon the report of a settlement or judgment submitted under this section.

Va. Code Ann. § 54.1-2909.

<http://law.lis.virginia.gov/vacode/title54.1/chapter29/section54.1-2909/>

3. Certain Data Required

The Board of Medicine shall require all doctors of medicine, osteopathy and podiatry to report and shall make available the following information:

A.
...

12. Other information related to the competency of doctors of medicine, osteopathy, and podiatry, as specified in the regulations of the Board.

C. The Board shall promulgate regulations to implement the provisions of this section, including, but not limited to, the release, upon request from a consumer, of such information relating to a specific doctor. The Board's regulations shall provide for reports to include all medical malpractice judgments and medical malpractice settlements of more than \$10,000 within the most recent 10-year period in categories indicating the level of significance of each award or settlement; however, the specific numeric values of reported paid claims shall not be released in any individually identifiable manner under any circumstances. Notwithstanding this subsection, a licensee shall report a medical malpractice judgment or medical malpractice settlement of less than \$10,000 if any other medical malpractice judgment or medical malpractice settlement has been paid by or for the licensee within the preceding 12 months.

Va. Code Ann. § 54.1-2910.1.

<http://law.lis.virginia.gov/vacode/title54.1/chapter29/section54.1-2910.1/>

4. Competency assessments of certain practitioners

The Board shall require an assessment of the competency of any person holding an active license under this chapter on whose behalf three separate medical malpractice judgments or medical malpractice settlements of more than \$75,000 each are paid within the most recent 10-year period. The assessment shall be accomplished in 18 months or less by a program acceptable to the Board. The licensee shall bear all costs of the assessment. The results of the assessment shall be reviewed by the Board and the Board shall determine a plan of corrective action or appropriate resolution pursuant to the assessment. The assessment, related documents and the processes shall be governed by the confidentiality provisions of § 54.1-2400.2 and shall not be admissible into evidence in any medical malpractice action involving the licensee. The Board shall annually post the number of competency assessments undertaken on its website.

Va. Code Ann. § 54.1-2912.3.

<http://law.lis.virginia.gov/vacode/title54.1/chapter29/section54.1-2912.3/>

5. Elements of a Competency Assessment:

1. Review of the facts regarding the paid claim cases:
2. Describe this doctor's fund of knowledge, medical judgment or decisionmaking and in the case of procedural specialties, skills.
3. Doctor's strengths:
4. Doctor's weaknesses:
5. Is there a need for remediation?
6. Is this doctor safe to practice?

Competency Assessment Guidance Document - link

<https://www.dhp.virginia.gov/Medicine/guidelines/85-6%20Competency%20Assessment%20Guidance%20Document%202011.pdf>

2009 REPORT OF THE VIRGINIA BOARD OF MEDICINE

In the last twelve months, twelve physicians were identified as being subject to a three-paid claims competency assessment pursuant to 54.1-2912.3. Eight physicians submitted reports to the Board in a timely fashion; none of the eight required action beyond obtaining the assessment.

6. Reporting of medical malpractice judgments and settlements.

A. In compliance with requirements of § 54.1-2910.1 of the Code of Virginia, a doctor of medicine, osteopathic medicine, or podiatry licensed by the board shall report all medical malpractice judgments and settlements of \$10,000 or more in the most recent 10-year period within 30 days of the initial payment. A doctor shall report a medical malpractice judgment or settlement of less than \$10,000 if any other medical malpractice judgment or settlement has been paid by or for the licensee within the preceding 12 months. Each report of a settlement or judgment shall indicate:

1. The year the judgment or settlement was paid.
2. The specialty in which the doctor was practicing at the time the incident occurred that resulted in the judgment or settlement.
3. The total amount of the judgment or settlement in United States dollars.
4. The city, state, and country in which the judgment or settlement occurred.

B. The board shall not release individually identifiable numeric values of reported judgments or settlements but shall use the information provided to determine the relative frequency of judgments or settlements described in terms of the number of doctors in each specialty and the percentage with malpractice judgments and settlements within the most recent 10-year period. The statistical methodology used will include any specialty with more than 10 judgments or settlements. For each specialty with more than 10 judgments or settlements, the top 16% of the judgments or settlements will be displayed as above average payments, the next 68% of the judgments or settlements will be displayed as average payments, and the last 16% of the judgments or settlements will be displayed as below average payments.

C. For purposes of reporting required under this section, medical malpractice judgment and medical malpractice settlement shall have the meanings ascribed in § 54.1-2900 of the Code of Virginia. A medical malpractice judgment or settlement shall include:

1. A lump sum payment or the first payment of multiple payments;
2. A payment made from personal funds;
3. A payment on behalf of a doctor of medicine, osteopathic medicine, or podiatry by a corporation or entity comprised solely of that doctor of medicine, osteopathic medicine, or podiatry; or
4. A payment on behalf of a doctor of medicine, osteopathic medicine or podiatry named in the claim where that doctor is dismissed as a condition of, or in consideration of the settlement, judgment or release. If a doctor is dismissed independently of the settlement, judgment or release, then the payment is not reportable.

18VAC85-20-290.

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+18VAC85-20-290>

7. Non-compliance or falsification of profile.

A. The failure to provide the information required by 18 VAC 85-20-280 and by 18 VAC 85-20-290 within 30 days of the request for information by the board or within 30 days of a change in the information on the profile may constitute unprofessional conduct and may subject the licensee to disciplinary action by the board.

B. Intentionally providing false information to the board for the practitioner profile system shall constitute unprofessional conduct and shall subject the licensee to disciplinary action by the board.

18VAC85-20-300.

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+18VAC85-20-300>

NATIONAL PRACTITIONER DATA BANK

Link to NPDB Guidebook - <http://www.npdb.hrsa.gov/resources/aboutGuidebooks.jsp>

1. Reporting Medical Malpractice Payments
2. Reporting of Payments by Individuals
3. Payments for Corporations or Hospitals
4. Practitioner Fee Refunds
5. Loss Adjustment Expenses
6. Dismissal of Defendant from a Lawsuit

1. Reporting Medical Malpractice Payments

Each entity that makes a payment for the benefit of a physician, dentist, or other health care practitioner in settlement of, or in satisfaction in whole or in part of, a claim or judgment against that practitioner must report the payment information to the NPDB. A payment made as a result of a suit or claim solely against an entity (for example, a hospital, clinic, or group practice) and that does not identify an individual practitioner is not reportable under the NPDB's current regulations.

Eligible entities must report when a lump sum payment is made or when the first of multiple payments is made. Medical malpractice payments are limited to exchanges of money and must be the result of a written complaint or claim demanding monetary payment for damages. The written complaint or claim must be based on a practitioner's provision of or failure to provide health care services. A written complaint or claim can include, but is not limited to, the filing of a cause of action based on the law of tort in any State or Federal court or other adjudicative body, such as a claims arbitration board.

NPDB Guidebook, E-8

2. Reporting of Payments by Individuals

Individual subjects are not required to report payments they make for their own benefit to the NPDB. On August 27, 1993, the Circuit Court of Appeals for the District of Columbia held that [445 (DC Cir. 3 F.3D 1993)] the NPDB regulation requiring each "person or entity" that makes a medical malpractice payment was invalid, insofar as it required individuals to report such payments. The NPDB removed reports previously filed on medical malpractice payments made by individuals for their own benefit.

A professional corporation or other business entity comprised of a sole practitioner that makes a payment for the benefit of a named practitioner must report that payment to the NPDB.

However, if a practitioner or other person, rather than a professional corporation or other business entity, makes a medical malpractice payment out of personal funds, the payment is not reportable.

NPDB Guidebook, E-10

3. Payments for Corporations and Hospitals

Medical malpractice payments made solely for the benefit of a corporation such as a clinic, group practice, or hospital are currently not reportable to the NPDB. A payment made for the benefit of a professional corporation or other business entity that is comprised of a sole practitioner is reportable if the payment was made by the entity rather than by the sole practitioner out of personal funds.

NPDB Guidebook, E-10

4. Practitioner Fee Refunds

If a refund of a practitioner's fee is made by an entity (including solo incorporated practitioners), that payment is reportable to the NPDB. A refund made by an individual is not reportable to the NPDB.

For purposes of NPDB reporting, medical malpractice payments are limited to exchanges of money. A refund of a fee is reportable only if it results from a **written** complaint or claim demanding monetary payment for damages. The written complaint or claim must be based on a physician's, dentist's, or other health care practitioner's provision of, or failure to provide, health care services. A written complaint or claim may include, but is not limited to, the filing of a cause of action based on the law of tort in any State or Federal court or other adjudicative body, such as a claims arbitration board.

A waiver of a debt is not considered a payment and should not be reported to the NPDB. For example, if a patient has an adverse reaction to an injection and is willing to accept a waiver of fee as settlement, that waiver is not reportable to the NPDB.

NPDB Guidebook, E-12

5. Loss Adjustment Expenses

Loss adjustment expenses (LAEs) refer to expenses other than those in compensation of injuries, such as attorney's fees, billable hours, copying, expert witness fees, and deposition and transcript costs. If LAEs are not included in the medical malpractice payment amount, they are not required to be reported to the NPDB.

LAEs should be reported to the NPDB **only** if they are included in a medical malpractice payment. Reporting requirements specify that the total amount of a medical malpractice payment and a description and amount of the judgment or settlement and any conditions, including terms of payment should be reported to the NPDB. LAEs should be itemized in the description section of the report form.

NPDB Guidebook, E-12

6. Dismissal of a Defendant from a Lawsuit

A payment made to settle a medical malpractice claim or action is not reportable to the NPDB if the defendant health care practitioner is dismissed from the lawsuit **prior** to the settlement or judgment. However, if the dismissal results **from a condition in the settlement or release**, then the payment is reportable. In the first instance, there is no payment for the benefit of the health care practitioner because the individual has been dismissed from the action **independently** of the settlement or release. In the latter instance, if the practitioner is dismissed from the lawsuit **in consideration** of the payment being made in settlement of the lawsuit, the payment can only be construed as a payment for the benefit of the health care practitioner and must be reported to the NPDB.

NPDB Guidebook, E-12-13