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PUBLICCITIZEN

March 14, 2011

Linda K. Whitney
Executive Director
Medical Board of California
2005 Evergreen St., Suite 1200
Sacramento, Ca 95815

Dear Ms. Whitney:

We are writing to ask your cooperation in our effort to understand the relationship between hospital clinical privilege actions and state medical board actions, the degree to which medical boards are being informed of hospital or other clinical privilege sanctions, and, when they are informed, why medical boards are not taking disciplinary action against doctors. Specifically, we are very concerned that 5,887 physicians nationally who have one or more clinical privilege reports in the National Practitioner Data Bank (NPDB), including 710 physicians in California,¹ do not have any state medical board licensing action (for the period of September 1990 through December 2009).

Nationally, the clinical privilege actions included 220 physicians who were considered an “Immediate Threat to Health or Safety” of patients. The hospital ordered an emergency suspension of admitting privileges for 167 (or 75 percent) of these 220 physicians. Thus, despite having been found to be an immediate threat to the health or safety of patients—and in 75 percent of cases, being subject to an emergency suspension of admitting privileges—as of December 2009, none of these 220 physicians had a state licensure board action.

We understand that not all clinical privilege actions would necessarily result in a licensure action. However, the large number of physicians with clinical privilege actions and no subsequent licensure action raises questions about either inadequate follow-up by boards after learning about clinical privilege actions or a possible problem with hospital notification to some state boards.

California is one of 32 states plus the District of Columbia where 50 percent or more of physicians with at least one clinical privilege report had no medical board action reported to the NPDB. Public Citizen is attempting to understand why no licensure actions were taken and to determine if improvements are needed for NPDB notification procedures.

¹ Includes 38 osteopathic physicians

A Public Citizen study has found, for example, that a physician in California (physician #5039 in our sample) had a clinical privilege report involving suspension of privileges in 1991 and 15 medical malpractice reports totaling \$1.9 million between 1993 and 2009. The reasons for the malpractice payouts, as described in the NPDB Public Use File, included two cases of retained foreign body (surgery related), and two cases of improper performance; one patient suffered significant permanent injury. As of December 2009, there had been no California state licensure board actions against this physician in the 18 years since the suspension of his privileges.

Hospital Reporting to the National Practitioner Data Bank

As you may know, federal law requires hospitals to report physicians to the NPDB any time they revoke or restrict a physician's privileges for more than 30 days for medical competency or conduct issues. The law also requires that copies of such reports go directly to the relevant licensing board. The "relevant" board is normally the licensing board of the facility's state, except in cases of federal facilities when it may be some other board.

Based on our understanding of the NPDB electronic reporting system, when hospitals report to the NPDB, a step in the reporting process informs them that they must print out and mail a copy of the report to the relevant state licensing board. According to the Federation of State Medical Boards, about 22 percent of physicians hold licenses in more than one state. It is therefore likely that such hospitals only send a hospital clinical privilege report to the board in the state in which hospital is located, while other states of licensure may not be notified. However, the other states would likely learn of the clinical privileges if they queried the NPDB or subscribed to the Proactive Disclosure Service, or as a result of self-reporting by the licensee. As of October 2010, only two state licensing boards were enrolled in the Proactive Disclosure Service.

Importance of Clinical Privilege Reports

We are particularly concerned about clinical privilege sanctions and their impact on licensing board actions because clinical privilege reports are usually considered important indicators that a licensing board action may be warranted. Indeed, the Citizen Advocacy Center (CAC), which is a national association of public members of state boards, including medical boards, has noted the following regarding the value of hospital sanction reports:

CAC research confirms that regulators believe the most useful source of information about potentially substandard practice by licensees is other members of the profession. Reports [to licensing boards] may be made either by individual licensees who have witnessed unsafe practices, or by health care institutions (primarily hospitals, but increasingly managed care and other providers) which have taken an adverse action against a licensee, such as the suspension, restriction, or removal of privileges for unsafe or substandard practice. Institutional actions are generally preceded by an investigation and peer review,

making them more likely than information from other sources to lead to disciplinary action.²

Public Citizen Study

A Public Citizen analysis of the NPDB Public Use File identified 5,887 physicians who have had one or more clinical privilege report to the NPDB but no licensure reports (for the period of September 1990 through December 2009). For the purposes of our analysis, physicians were assigned to a state based on their last clinical privilege action. Thus, a physician may have had two clinical privilege actions reported in state A, but the third, and most recent report was for a clinical privilege action occurring in state B. The physician in this example would have been assigned to state B for the purposes of our analysis. In addition, if a physician with one or more clinical privilege actions had a licensing board action in any state, the practitioner was not included in our study. We realize that this methodology is not precise in identifying relevant states, but the exclusion of physicians with licensure actions in any state results in an understatement of the extent of any problems in boards receiving information or taking disciplinary action.

Our study included an examination of the number of clinical privilege reports per physician, the reasons stated for each clinical privilege action, the nature of the action taken against the physician and the relationship of clinical privilege reports to medical malpractice payments. As stated above, the analysis focused only on physicians with one or more clinical privilege reports but no state medical board action. Our report, which is attached, provides both national- and state-level perspectives on this issue. For example, from national data we found that 3,218 physicians had from one to five clinical privilege reports involving permanent loss of privileges. None of these physicians had a state medical board action. We also determined that there were 1,297 hospital reports for incompetence, yet none of these cases resulted in a medical board disciplinary action. With respect to individual states, one state had a practitioner with five clinical privilege reports and 12 medical malpractice reports but, again, no state licensing board action.

What You Can Do

As noted earlier, Public Citizen would like to examine the relationship between hospital clinical privilege reports and licensing board actions, and the degree to which licensing boards are being informed of clinical privilege actions. We believe that the results of such a study could benefit licensing boards and the NPDB. Ultimately, the results might lead to better information sharing and therefore better protection of the public.

Because the NPDB Public Use File does not identify physicians by name, to participate in this study your board will have to work with the Health Resources and Services Administration (HRSA) to identify physicians licensed in your state with clinical privilege actions (in any state) and no licensure actions. You can request from HRSA a list of physicians who have had one or more clinical privilege reports (regardless of state)

² Rebecca Cohen and David Swankin, Citizen Advocacy Center, [Hospital Reporting to State Regulators And to the National Practitioner Data Bank](#), March 1997, 1.

that are listed on any NPDB report as being licensed in your state. Although we have not solicited HRSA's cooperation on this initiative, HRSA has traditionally provided such lists to state boards on request for reporting audit purposes at no cost. The point of contact for such requests is Cynthia Grubbs, Director, Division of Practitioner Data Banks, 5600 Fishers Lane, Suite 8-104, Rockville, Maryland 20857.

Once you identify such physicians, we would appreciate if you could provide responses to the questions listed below. Note that we are not asking for the names of the physicians involved.

1. For those doctors listed as being licensed in your state during the past five years and having a clinical privilege action in your state or any other states, for how many physicians was the board previously aware of the clinical privilege report(s) prior to obtaining the list from HRSA? For how many physicians was the board not aware of the clinical privileges report(s) prior to obtaining the list from HRSA?
2. For physicians for whom the board had previously received the clinical privileges report(s), for how many physicians had the board opened an investigation, and for how many physicians had the board opened a formal case based on the clinical privileges action(s)? For how many physicians had the board not considered taking a licensure action based on the clinical privileges action(s) without any investigation?
3. For how many physicians did the board take a licensure action that was wholly or partially based on the clinical privileges action(s)? If the board took a private, (i.e. non-public) action, what type of private action was taken?

We would be grateful to receive a response to these questions within six months from the date of this letter. We greatly appreciate your assistance in this study and trust the results will be beneficial to your board, the NPDB and the public.

If you have any questions, please contact Alan Levine at (202) 588-7736 or at alevine@citizen.org.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "S Wolfe". The signature is stylized and written in a cursive-like font.

Sidney Wolfe, M.D.
Director
Health Research Group