

Memorandum of Understanding  
Between the Department of Health and Human Services  
and the Department of Defense

Authority: This Memorandum of Understanding between the Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS), and the Department of Defense (DoD) ensures the participation of the DoD in the national reporting system established under Part B of The Health Care Quality Improvement Act of 1986 (the Act), Pub.L. 99-660, in accordance with the intent of Congress as set forth in section 432 of the Act.

General Description of Activities.

(a) Malpractice reports.

- (1) A report shall be filed with the National Data Bank, as established by regulations at 45 CFR Part 60, on any payment for a malpractice claim against the DoD, any Agency of the DoD, or a health care practitioner working for the DoD. In accordance with DoD policy, all malpractice claims shall be analyzed by peer review, assigned a category of responsibility, and reported as follows:
  - o Standard medical care. Payments made for claims in which the patient was found to have received appropriate care shall be reported under the name of the primary physician.
  - o Minor deviation from standards of care. When payments are made for claims in which the patient was found to have received care that was substandard in minor respects, a separate report shall be submitted for each practitioner found to have provided substandard care.
  - o Major deviation from standards of care. When payments are made for claims in which the patient was found to have received care that was substandard in major respects, a separate report shall be submitted for each practitioner found to have provided substandard care.
- (2) Payments made for claims where there is deviation from standards of care which is attributable to circumstances outside of the control of health care practitioners (e.g., power failure, accidents unrelated to patient care, and drugs mislabeled by the supplier) shall not be reported to the data bank.
- (3) The report shall include the following:
  - o The diagnosis for which the patient received care and the nature of the alleged negligence leading to the malpractice claim and settlement;
  - o The name and other identifying data of the practitioner responsible for care;

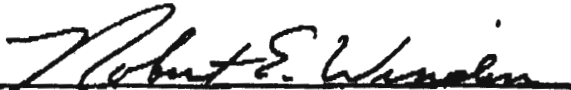
- o Identification of the health care facility; and
  - o The amount of the payment and the means of settlement (i.e., administrative settlement, litigation settlement, or judicial judgment).
- (b) Professional sanction reports. The DoD shall report all instances in which a DoD health care practitioner's clinical privileges are denied, limited (restricted), or revoked by an Agency of the DoD for reason of incompetent or negligent performance.
- (c) Practitioner misconduct reports. The DoD shall report all instances in which a DoD health care practitioner is found guilty (after appellate review), pleads guilty, or is discharged in lieu of court-martial for unprofessional conduct as defined in DoD Directives.
- (d) Practitioner data inquiries. Inquiries for data on practitioners shall be made to the data bank in accordance with section 425 of the Act and its implementing regulations, as follows:
- (1) By the appropriate recruiting Agency at the time of application for employment by an Agency of the DoD.
  - (2) By the health care entity at the time a practitioner applies for clinical privileges.
  - (3) By the health care entity at least every 24 months or whenever the practitioner reapplies for clinical privileges.
  - (4) By the health care entity at the beginning of any investigation of a practitioner for substandard clinical performance or unprofessional conduct.
- (e) All reports from the data bank are confidential as required by the Act and its implementing regulations.


Period of Agreement: This agreement is indefinite; it is subject to termination by either party with 60 days notice.

Implementation Date: Under section 424 (a) of the Act, information must begin to be reported to the National Data Bank by November 14, 1987.

Periodic Consultations: The signatories (or their designees) shall consult at least annually to evaluate the implementation of this Memorandum of Understanding.

Report to Congress: Section 432 of the Act requires the Secretary, HHS to submit a report on this Memorandum of Understanding and on the cooperation among officials in establishing it. HHS shall submit this report to DoD for comment.

  
Robert E. Windom, M.D.  
Assistant Secretary for Health  
Public Health Service

  
William Mayer, M.D.  
Assistant Secretary of Defense  
Health Affairs

September 1987



HEALTH AFFAIRS

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Honorable James O. Mason, M.D.  
Assistant Secretary of Health  
Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Dr. Mason:

This letter is to report to the Department of Health and Human Services that the Department of Defense has today established our formal Instruction, copy attached, regarding our participation in the National Practitioner Data Bank.

As you know, there has been some uncertainty and controversy in both the private sector and federal sector medical communities regarding the identification of individual practitioners "for whose benefit" (quoting the statute) a malpractice payment was made. As you confirmed in your October 9, 1990, letter to me, the HHS regulations interpret the statute as requiring a malpractice report only in cases in which legal liability has been established against an individual practitioner, and not requiring a report when legal liability rests with an entity. Under this interpretation, cases involving DoD practitioners would virtually never be reported because, as with a large and growing number of private sector practitioners, legal responsibility and potential liability rest with a corporate or other operational entity.

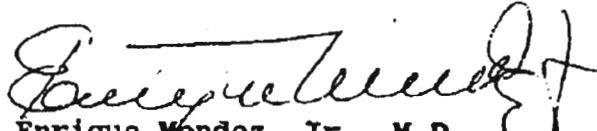
The Department of Defense has decided, however, that we will submit malpractice case information to the data bank when appropriate, notwithstanding the legal exception. Specifically, our Instruction calls for malpractice case reports in three circumstances: 1) when peer review determines that the standard of care was not met; 2) when a court finds that a practitioner was negligent (even though peer review concluded otherwise); and 3) when the Surgeon General determines that, based on the complete record of an out of court settlement (even though peer review found that the standard of care was met), the purpose of the data bank requires that a report be made.

In your files is a copy of a September 1987 Memorandum of Understanding between our two offices regarding the data bank. Reflecting DoD's good faith commitment to successful implementation, this MOU was signed less than one year after the statute was enacted, and more than two years before the HHS final regulations were issued. The MOU was largely overtaken by events in connection with the HHS regulations, especially regarding

clarification of the legal duty to file reports. The MOU states that it is subject to termination by either party with 60 days notice. With the issuance of our formal Instruction, we terminate the operation of those portions of the MOU that are inconsistent with the Instruction, and reaffirm our commitment to support the successful implementation of the National Practitioner Data Bank.

We look forward to working with you in the future to improve the operation of the data bank and contribute to its success.

Sincerely



Enrique Mendez, Jr., M.D.

Enclosure  
as stated