

# The Journal of the Michigan Dental Association

---

Volume 104 | Number 2

Article 5

---

2-1-2022

## Dentistry and the Law: Can I Be Reported to the Data Bank in Connection with a Billing Dispute?

Dan Schulte JD

*Kerr Russell*, [dschulte@kerr-russell.com](mailto:dschulte@kerr-russell.com)

Follow this and additional works at: <https://commons.ada.org/journalmichigandentalassociation>



Part of the [Dental Public Health and Education Commons](#), [Health and Medical Administration Commons](#), [Health Law and Policy Commons](#), [Human Resources Management Commons](#), [Insurance Commons](#), [Leadership Commons](#), and the [Other Dentistry Commons](#)

---

### Recommended Citation

Schulte, Dan JD (2022) "Dentistry and the Law: Can I Be Reported to the Data Bank in Connection with a Billing Dispute?," *The Journal of the Michigan Dental Association*: Vol. 104: No. 2, Article 5.

Available at: <https://commons.ada.org/journalmichigandentalassociation/vol104/iss2/5>

This Monthly Departments is brought to you for free and open access by the State & Local Dental Publications at ADACommons. It has been accepted for inclusion in The Journal of the Michigan Dental Association by an authorized editor of ADACommons. For more information, please contact [commons@ada.org](mailto:commons@ada.org).



By Dan Schulte, JD  
MDA Legal Counsel

# Can I Be Reported to the Data Bank in Connection with a Billing Dispute?

**Question:** A dental plan administrator recently audited my practice. It looked at claims over the last six years or so. They said that I billed

before procedures were done and used incorrect codes. The dental plan administrator has threatened to make a report to the National Practitioner Data Bank if I don't agree to settle and repay a large amount. I don't feel I've done anything wrong, and I think this is a scare tactic. It says a report will jeopardize my continued participation with other dental plans I participate with. Can a Data Bank report be made over a billing dispute when no problems with the quality or appropriateness of the treatment I provided have been made?

**Answer:** The technical reasons discussed below notwithstanding, no one should use a Data Bank report as a bargaining chip in a negotiation to resolve a dispute. The Data Bank was created for use only by certain entities, for example, medical malpractice insurers, hospitals and other health care entities, certain professional societies, a health plan, certain federal and state agencies, etc. The purpose of the Data Bank is to act as a clearinghouse to collect and release reported information about the professional conduct of health care professionals. Those who are required to report to the Data Bank by law should do so regardless of the effect it may have on a negotiation.

I believe the answer to your question is “no” for two reasons. First, adverse actions taken based only on past billing practices should not be reportable because they do not involve your professional competence or conduct. You should clarify that the dental plan's allegations are based only on billing (using the wrong pro-

cedure code, untimely submitting claims, using an improper claim form, etc.) and are not based in part on the quality or appropriateness of the services you provided (the treatment provided was not necessary, was below the standard of care, your treatment records were incomplete, you should have used different materials, etc.). If the allegations are purely that billing was improper for some reason but there are no allegations involving your professional competence or conduct, then the allegations would not be the proper subject of a Data Bank report.

**Adverse actions taken based only on past billing practices should not be reportable because they do not involve your professional competence or conduct.**

Second, you use the term “administrator” when describing this dental plan. I will assume that this means it is not an issuer of insurance policies providing coverage for dental services and is not otherwise a provider of dental benefits. Instead, it only provides administrative services (including audit services) to entities that do provide insurance or benefits. If this is the case, your “dental plan administrator” would not be eligible to make a report to the Data Bank. Only “health plans” that provide benefits directly through insurance, reimbursement, or otherwise are eligible to make a Data Bank report, not

their administrators who only provide administrative services.

Unfortunately, there is no procedure to verify whether your dental plan is a “health plan” able to report. The Data Bank relies on self-certification forms submitted by entities that assert that they are “health plans.” The best practice when a threat such as this is made is to inform the dental plan that you are aware of your rights, you know who may make a report to the Data Bank, and that any report filed will be contested. ●

*Email questions for publication to Journal Managing Editor Dave Foe at [dfoe@michigandental.org](mailto:dfoe@michigandental.org).*