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Data Bank Reporting: A Consequence of an Administrative Complaint



By Dan Schulte, JD
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Question: I recently settled a licensing complaint with the state of Michigan during my compliance conference. In my view the complaint lacked merit.

However, I did not want to go through an administrative hearing because it was going to be expensive. I agreed to probation until I completed six hours of additional continuing education and a paid a \$1,000 fine. I later found out I was going to be reported to the National Practitioner Data Bank. This never came up at the compliance conference. I would not have settled had I known this report would be made, and I assumed I was settling this confidentially. How can this be?

Answer: You do not mention if you were represented by an attorney. This is an example of a situation where an attorney experienced in health care law could have provided valuable advice/explanation. The federal Health Care Quality Improvement Act, 42 U.S.C. 11101 et seq., requires state licensure authorities and certain other entities to report to the National Practitioner Data Bank “any adverse action” taken by them against a licensee resulting from a “formal proceeding.” Adverse actions include probation, additional continuing education, and a fine. The state of Michigan considers an Administrative Complaint followed by a compliance conference to constitute a formal proceeding. It does not matter that there was not an administrative hearing.

I assume that you entered into a Consent Order and Stipulation when your case was resolved. In my experience, language is included by the state of Michigan in the Stipulation that the sanction/action taken will be reported to the NPDB. I do not know if this language was included in your Consent Order and Stipulation or if it was missed upon review.

It is worth noting that the NPDB regulations provide that certain actions are not reportable to the NPDB. These non-reportable actions include administrative fines, citations, corrective action plans, and monitoring (if it does not restrict your ability to practice). Despite these exceptions, however, the state of Michigan’s prac-

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tice is to report any action taken (e.g., when the only sanction is a fine). Therefore, it appears that any time an administrative complaint is filed an NPDB report will be made, no matter how the case is resolved.

The only possible ways to avoid the NPDB report appear to be to:

- Go to an administrative hearing, obtain favorable Findings of Fact and Conclusions of Law from the Administrative Law Judge, and hope that they convince the disciplinary subcommittee of the Board of Dentistry to dismiss the case without action being taken against you.
- Negotiate at the compliance conference that a NPDB report will not be made.
- Appeal to the NPDB seeking the removal of your report (the process for appeal, a discussion of the state of Michigan’s interpretation of the NPDB regulations, and the likelihood of success is beyond the scope of this column).

A final note regarding your goal of settling your case “confidentially.” This is not entirely possible, since Michigan’s Public Health Code (MCL 333.16241) requires all licensing sanctions to be published by the Department of Licensing and Regulatory Affairs and further requires you to notify your employer and, if applicable, any medical staff of which you are a member. Currently, LARA satisfies this requirement by posting Consent Orders and Stipulations on its website. Again, in my experience this is noted in the Consent Order and Stipulation. Those documents were never going to be confidential. For this reason, they need to be carefully reviewed and negotiated. ●