



Public Citizen Petitions HHS Over Hospital Reporting

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Citizen Advocacy Center Editorial Note: Public Citizen's Health Research Group wrote to HHS Secretary Sebelius on March 14, 2011 transmitting a report showing that fewer than 50% of adverse actions by hospitals against physicians subsequently result in disciplinary action by a licensing board. Excerpts from the letter appear below. The report can be found at: <http://www.citizen.org/hrg1937>.

March 15, 2011

Dear Secretary Sebelius:

Attached is a Public Citizen report being published today, which found that 5,887 physicians who have one or more clinical privilege reports in the National Practitioner Data Bank (NPDB) – the majority of physicians with such clinical privilege reports – have never had any state medical board action. State medical board licensure action against a physician, if warranted, provides a greater assurance than a hospital privilege action alone that the 105 million patients whose medical care is partly funded by HHS (47 million Medicare, 58 million Medicaid enrollees) would be better protected from questionable physicians. For example, our study discovered that because 220 physicians were considered an “Immediate Threat to Health or Safety” of patients, hospitals ordered an emergency suspension of admitting privileges for 167 (or 75 percent) of these 220 physicians. Despite having been found by hospital peer review to be an immediate threat to the health or safety of patients, none of these physicians had a state licensure board action.

The purpose of this letter is to urge you to re-initiate previous, but currently non-existent Office of Inspector General (OIG) investigations concerning the dangerously lax disciplinary actions by so many state medical boards...

In addition to the 220 physicians noted above, other reasons for the actions against these 5,887 physicians included:

- 1,149 physicians disciplined because of incompetence, negligence or malpractice;
- 605 physicians disciplined because of substandard care.

Other categories of serious deviations of physician behavior/performance that resulted in clinical privilege revocation or restrictions included sexual misconduct, unable to practice safely, fraud including insurance fraud, fraud obtaining a license, and fraud against health care programs and narcotics violations.

3,218 physicians in our study lost their clinical privileges permanently, and an additional 389 physicians lost privileges for more than one year.

Our report also presents specific examples of physicians who have been disciplined by hospitals but who have not a state medical board action. Many of these physicians have multiple medical malpractice payouts...

During the 1980s and 1990s your Office of Inspector General acknowledged the importance of effective medical board oversight; during this time period they conducted 16 evaluations of state health professional licensing boards including nine specifically addressing inadequate medical boards' performance. One of the medical board studies, entitled "Federal Initiatives to Improve State Medical Boards' Performance" (OEI-01-93-00020) noted:

State medical boards provide a vital front line of protection for millions of people who receive medical care including those in the Medicare and Medicaid Programs... the boards have not been at the forefront of quality assurance efforts...

Because of highly questionable legal constraints imposed by OIG lawyers, the last OIG investigation of state medical boards was in 1993.

Notwithstanding continuing harm to Medicare and Medicaid patients from inadequately disciplined physicians, the OIG has taken the position, based on "guidance" from the Office of Council to the Inspector General (OCIG), that OIG has no authority to review the performance of state medical boards...

Although state medical board disclosure policies and other medical board oversight issues could affect millions of Medicare and Medicaid patients, the Office of Council to the Inspector General rejected the staff request for consideration of a medical board study based on the "lack of OIG authority." This decision reflected the above-mentioned long-standing questionable legal conditions imposed by OCIG on OIG studies...

If OIG discretionary sanction authority depends, to a certain extent, on referrals from state licensing boards, OIG's ability to assure the optimal number of medical board referrals by investigating board performance appears to be compromised by the questionable legal barriers established by OIG's own legal staff that prevent OIG studies of medical boards' performance...

Madame Secretary, because of OIG's significant historical oversight role involving state medical boards performance, and because of medical boards importance to Medicare and Medicaid patients' protection from questionable doctors, Public Citizen calls upon HHS to re-initiate OIG investigations of medical boards.

Sincerely,

Sidney Wolfe, M.D.

Director, Health Research Group

Since 1987, **CAC** has been serving the public interest by enhancing the effectiveness and accountability of health professional oversight bodies. CAC offers training, research and networking opportunities for public members and for the health care *regulatory, credentialing, and governing* boards on which they serve.