



Los Angeles County Department of Health Services

Policy & Procedure Title:		Apportionment and Reporting of Settlements, Judgments, or Arbitration to Licensing Boards and the National Practitioner Data Bank	
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DHS Division/Unit of Origin:	HSA-Quality Improvement and Patient Safety		
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PURPOSE:

California law requires that settlements, judgments, and arbitration awards resulting from medical malpractice claims against a licensed health care practitioner and that are in excess of certain dollar amounts, be reported to the respective licensing board. Federal law also requires the reporting of medical malpractice payments, regardless of amount, to the NPDB. This policy defines the process for apportioning and subsequently reporting settlements, judgments, or arbitration awards to the National Practitioner Data Bank (NPDB) and appropriate licensing bodies pursuant to 45 CFR Part 60 and California Business and Professions Code Sections 801.01 et seq.

DEFINITION(S):

Apportionment: The process of determining the percentage of a settlement that is attributed to a named or alleged licensed health care practitioner as a result of a claim for damages for death or personal injury allegedly resulting from a licensee’s negligence, error, or omission in practice of by the unauthorized rendering of professional services.

Arbitration: The process of resolving a dispute through the use of an unbiased third person (arbitrator) designated by the involved parties, who agree in advance to comply with the award decision of the arbitrator.

Judgment: A decision by a court that resolves a dispute and determines the rights and obligations of the parties involved, including any required payout of money by the parties involved (such as named licensed health care practitioners in a medical malpractice lawsuit).

The mission of the Los Angeles County Department of Health Services is to ensure access to high-quality, patient-centered, cost-effective health care to Los Angeles County residents through direct services at DHS facilities and through collaboration with community and university partners.

Licensed health care practitioner: An individual who is licensed and authorized by the State of California to provide health care services (e.g. physicians, nurses, podiatrists, dentists, etc.).

Mediation: A process of resolving a dispute through a neutral third-party mediator who acts as a facilitator in negotiating an agreement between contesting parties. Mediation differs from arbitration in that the involved parties are not bound by the recommendations of the mediator.

National Practitioner Data Bank (NPDB): A clearinghouse developed by the federal government to collect and release certain information related to the professional competence and conduct of physicians, dentists, and other licensed health care practitioners.

Settlement: The process of resolving a dispute between parties without pursuing the matter through a trial.

POLICY:

California law requires that settlements, judgments, and arbitration awards resulting from medical malpractice claims against a licensed health care practitioner, that are in excess of certain dollar amounts, be reported to the appropriate licensing board. Pursuant to Business and Professions Code Section 801.01 et seq., the Department of Health Services (DHS) will report settlements, judgments, or arbitration awards exceeding those reporting thresholds to the licensing boards. In the event of a judgment or arbitration award against a licensed health care practitioner, the specific amount apportioned to each named or alleged licensee exceeding those thresholds will be reported to the appropriate licensing board. In the event of a settlement, the specific amount apportioned to each named or alleged provider will be determined through the apportionment process described below.

Federal law also requires the reporting of all medical malpractice payments, regardless of amount, to the NPDB. Pursuant to 45 CFR Part 60, DHS will report any medical malpractice payments, resulting from a written claim or judgment against a named licensee to the NPDB within 30 calendar days of the date the payment was made.

PROCEDURE:

Prior to settlement and before reporting any apportioned amount to a licensed provider, defense counsel and/or the Department's third party administrator, shall identify any named/alleged licensees. The Department's third party administrator will inform the named/alleged licensee(s) of the reporting requirements and provide licensees with a copy of this policy. Named/alleged licensee(s) will also be provided with documentation demonstrating the allegation or naming within the claim. All named/alleged licensee(s) will be reviewed by County Counsel to determine their involvement in the claim or lawsuit. Should it be determined that a named/alleged licensee(s) is not materially involved, County Counsel may request to have the named/alleged licensee(s) dismissed from the lawsuit. Any named/alleged licensee(s) dismissed from a lawsuit prior to settlement, judgment, or arbitration award,

regardless of the level of participation in the case, will not be reported to the NPDB (provided that the dismissal is not a condition of settlement).

Prior to making a decision to settle, mediate, arbitrate, or take a case to trial, County Counsel shall convene a 'roundtable' meeting(s) with defense counsel (when utilized in the defense of a case), inviting the named/alleged licensee(s) and other appropriate facility staff to discuss the apportionment process, the claim/lawsuit at hand, and the proposed plan of action. Defense counsel and/or County Counsel will present the facts of the case, provide a summary of expert opinions and relevant depositions, and propose a case strategy. County Counsel will work collaboratively with defense counsel, facility risk management, and the potentially reportable named/alleged licensee(s) to obtain consensus about the case strategy.

All potentially reportable named/alleged licensee(s) shall be afforded the opportunity to meet with facility risk management and defense counsel (when applicable) prior to the roundtable meeting(s) and throughout the process to discuss the implications of the reporting requirements and to be appraised of the status of the claim or lawsuit. Should there be a conflict of interest between defense counsel and the named/alleged licensee(s), County Counsel may assign new defense counsel. Licensed practitioners who chose to appoint their own counsel in defense of a lawsuit may lose indemnification privileges afforded by the County.

If, as a result of these discussions, a decision is made to settle a claim or lawsuit, the facility and named/alleged licensee(s) shall be notified of the decision. If the total amount of the settlement exceeds the reporting thresholds as described below, the apportionment and reporting process will be initiated. In cases where the factor for settlement is solely systems and/or economic issues, then all of the named/alleged licensee(s) will be apportioned \$0 of the settlement.

Apportionment Process

The Department's third party administrator will prepare a copy of the medical record, claim/complaint/lawsuit, factor for settlement, relevant deposition summaries and transcripts, defense counsel's Trial Counsel Report (TCR), and list of named/alleged licensee(s) for review by the Apportionment Consultant. (The County's designated Apportionment Consultant shall be an independent contractor with both medical and legal credentials). The facility and named/alleged licensee(s) shall be provided 15 days to review the documents being submitted to the Apportionment Consultant and provide any additional written clarifying statements. The Apportionment Consultant will then review the documentation and provide an explanation and recommendation for apportioning the settlement to any named/alleged licensee(s), as well as to the system(s) if applicable, within 10 days.

The following principles provide guidance to the Apportionment Consultant when making a recommendation:

1. Residents are in training.
2. Attending staff bear the responsibility for resident's patient care.

Exceptions to these principles include:

1. Resident disobeys clear instructions from a supervising physician.
2. Resident misrepresents or fails to present clinical or other information to a supervising physician.
3. Resident fails to provide a level of clinical care or judgement that would be minimally expected of a resident at that level of training.

The Apportionment Consultant's recommendation will be shared with the facility and named/alleged licensee(s).

Disagreement with the Apportionment Recommendation

If the facility and/or named/alleged licensee(s) disagree with the Apportionment Consultant's recommendation, they may request to participate in the dispute resolution process. The party disputing the recommendation must provide written documentation supporting their position within 15 days of the Apportionment Consultant's initial recommendation. The Apportionment Consultant will review the documentation provided and prepare a final recommendation within 7 days. A copy of the apportionment consultant's final recommendation will be provided to the facility and named/alleged licensee(s).

If the facility and/or named/alleged licensee(s) disagree with the Apportionment Consultant's final recommendation they may request an appeal meeting with the DHS Director within 15 days. The DHS Director will meet with the facility and/or named/alleged licensee(s) within 30 days of the Apportionment Consultant's final recommendation and provide a response within 15 days of the meeting. If the DHS Director's determination increases the amount apportioned to the named/alleged licensee(s), the named/alleged licensee(s) may request within 15 days another appeal meeting with the DHS Director. The DHS Director will meet with the named/alleged licensee(s) within 30 days of the initial appeal determination and provide a final determination within 15 days of the meeting. The concluding determination by the DHS Director is considered final.

Reporting to the Licensing Boards

The licensing board of the named/alleged licensee(s) will be notified by the Department's third party administrator when the apportionment decision, settlement, arbitration award, and/or judgment exceeds the reportable limits noted below. Named/alleged licensee(s) may provide a written statement to accompany the report to the licensing board within 7 days of the final apportionment decision. The report will be submitted to the licensing board no later than 30 days after the settlement is approved by the Board of Supervisors.

The current reportable limits for each licensing board are any amount above the following limits:

- \$30,000 Medical Board of California
- \$30,000 Board of Podiatric Medicine
- \$30,000 Physician Assistant Board
- \$30,000 Osteopathic Medical Board
- \$10,000 Board of Behavioral Sciences
- \$10,000 Board of Psychology
- \$10,000 Dental Board of California
- \$10,000 Board of Registered Nursing
- \$10,000 Veterinary Medical Board
- \$3,000 State Board of Chiropractic Examiners

- \$3,000 Board of Vocational Nursing and Psychiatric Technicians
- \$3,000 State Board of Optometry
- \$3,000 Physical Therapy Board of California

- \$3,000 Pharmacy Board
- \$3,000 Respiratory Care Board

Reporting to the National Practitioner Data Bank

Pursuant to 45 CFR Part 60, DHS will report any medical malpractice payments resulting from a written claim or judgment against named/alleged licensee(s) to the NPDB within 30 calendar days of the date the payment was made. There is no minimum payment amount threshold for reporting to the NPDB.

A payment made as a result of a claim or lawsuit where no licensee was named, or named/alleged licensee(s) were dismissed prior to the settlement, judgement, or arbitration award, will not be reported to the NPDB.

REFERENCE(S)/AUTHORITY:

California Business and Professions Code Sections 801/801.01, et seq.

45 Code of Federal Regulations (CFR) Part 60

U.S. Department of Health and Human Services, Health Resources and Services Administration. NPDB Guidebook. Rockville, Maryland: U.S. Department of Health and Human Services, 2015.