OLIVE VIEW-UCLA MEDICAL CENTER
POLICY & PROCEDURE

NUMBER: 117
VERSION: 3

SUBJECT/TITLE: **LICENSEE REPORTING TO LICENSING BOARD**

POLICY: Pursuant to the laws that govern mandatory malpractice reporting to the Medical Board of California (MBC) found in Business and Professions Code Sections 801.01, et.seq., the Department of Health Services shall report settlements exceeding reporting thresholds and all judgments or arbitration awards and shall apportion all settlements that are reported to any licensing board.

PURPOSE: For medical malpractice claim settlements, judgments or arbitration awards, the Department of Health Services must implement a process for:

1. Reviewing all claims against a licensee to determine reportability;

2. Determining appropriate reporting entity pursuant to Business and Professions Code Sections 801.01 et.seq.;

3. Reporting settlements, judgments or arbitration awards (including licensee information) in accordance with Business and Professions Code Sections 801 et seq. using the following reporting procedure; and

4. Apportioning settlements to prevent the MBC from attributing the full amount of a settlement to each physician reported.

DEPARTMENTS: All

DEFINITIONS:

PROCEDURE: Per the Business and Professions Code 801.01, amounts in the settlement agreement, judgment or arbitration award shall be apportioned only among individuals who were "named or alleged" by the plaintiff in either the claim, complaint, discovery, or action or settlement/arbitration or other charging documents by the plaintiff.

The following elements are required in order to establish an allegation: a plaintiff or person on behalf of a plaintiff claims in any of the written forms referenced above that a licensee's negligence, error, omission in practice, or by his or her rendering of unauthorized professional services, caused death or personal injury. A final list of potentially reportable licensees, who were named or alleged by plaintiff, shall be delivered to Health Services Administration Quality Improvement and Patient Safety (HSAQIPS) and the County's Third Party Claims

Administrator by defense counsel as a Final Summary in either a separate document prepared by defense counsel or as a section of the final defense counsel evaluation, upon final resolution of the case.

In the case of judgments or arbitration awards, the full amount of the judgment or award attributed to each named licensee will be reported to the appropriate licensing board.

To assist in evaluating claims and lawsuits, County Counsel shall convene a meeting or meetings consisting of appropriate levels of staff and management. If, as a result of these meetings, a decision is made to settle a claim or lawsuit, the facility shall be notified and the reporting procedure, as described below, shall be followed.

Prior to the convening of these meetings Defense Counsel shall identify any named or alleged licensees subject to the reporting requirements under section 801.01 et seq. of the Business and Professions Code in the event that the case is settled. The County's Third Party Claims Administrator shall prepare a letter of notification announcing the date of the meeting and the potential for reporting to the licensing board and shall mail that letter to the potential reportable licensee(s) (Attachment I). For alleged but not named licensees, the documentation that is the basis for the allegation, as the named licensee has already been served, will be provided. The licensee(s) who may be subject to reporting in accordance with Business and Professions Code Sections 801.01 et.seq. may choose to participate in the meeting. The degree of participation beyond the role of the potential reportable licensee shall be at the discretion of County Counsel. Participation by other peers and/or supervisors may be requested.

In the event that subsequent to the facility meetings, additional licensees are identified by defense counsel as either named or alleged subject to the reporting requirements under section 801.01 et seq. of the Business and Professions Code, defense counsel will notify TPA, and additional meeting(s) will be held with all potential reportees invited.

All potentially reportable licensees shall be afforded the opportunity to meet with defense counsel assigned to represent the County and the licensee, prior to the meeting and throughout the process to discuss implications of the reporting requirements and to be appraised and advised of the process and procedures described in this policy. In the event of a conflict between the defense counsel representing the licensee and the County, as determined by County Counsel, a separate defense counsel may be assigned to represent the licensee.

At the meeting(s), the County Counsel will be responsible for all decisions regarding settlement or trial where necessary and, when settlement is decided, the

factors for settlement. Attendees will provide input and discuss pertinent aspects of the case. An effort will be made at the meeting to obtain consensus on the decision to settle or go to trial. In addition, if a decision for settlement is determined, an effort will be made to obtain consensus on the factor(s) for settlement.

If the amount of settlement meets a reporting threshold as described below and there are licensees named or alleged subject to the reporting requirements under section 801.01 et seq. of the Business and Professions Code, then the HSAQIPS Office shall be notified by the County's Third Party Administrator within 24 hours of the settlement decision. In such cases, if the factors for settlement are solely systems and/or economic issues, then all of the licensees named or alleged will be apportioned 0% of the amount of settlement.

Otherwise, within 10 business days of the settlement decision, the County's Third Party Claims Administrator shall prepare a copy of the medical record, a copy of the complaint(s), a copy of the County Counsel's determination on the factors for settlement, a copy of the relevant deposition summaries, a copy of the relevant deposition transcripts, and a copy of the Trial Counsel Report including the Final Summary of Potentially Reportable Licensees, taking care to exclude peer-review documents, and send such documents to HSAQIPS, who will forward them to the facility Medical Director/Nursing Director (or facility-designated group). The facility Medical Director/ Nursing Director (or facility-designated group), will have10 business days to review the documents and to provide the role and specific activities of each reportable licensee related to the factor(s) for settlement and relevant clarifying or explanatory documents, if desired.

Apportioning Process

At the end of the 10 business day period, HSAQIPS will return the documents and any additional information provided by the facility Medical Director/Nursing Director (or facility-designated group) to the County's Third Party Administrator to forward to the apportionment consultant. (The County's designated apportionment consultant shall be an independent contractor with both medical and legal credentials). If the facility Medical Director/Nursing Director (or facility-designated group) prepares additional clarifying documents and forwards those to HSAQIPS within the 10 day time period, those documents will also be provided to the apportionment consultant. The County's apportionment consultant will recommend apportionment of the settlement attributed to any reportable named and alleged licensees identified by Defense Counsel in the Final Summary of Potentially Reportable Licensees, as well as, systems issues and economic factors, if any, that are identified.

The County's apportionment consultant shall review the applicable documents and

render his/her written opinion as to the apportionment of liability within 10 business days of receipt of applicable documents. The written opinion shall be forwarded to the HSAQIPS Director. HSAQIPS will forward this written decision to the facility Medical Director/Nursing Director (or facility-designated group). The facility shall notify each identified reportable licensee of the decision (Attachment II is the letter for the licensee) including the total amount of the settlement and the amount attributed to each licensee. Notification may be in person, or by correspondence with confirmation in writing or by telephone including fax, email, letters or certified mail to last known address. The facility and licensee(s) shall have 30 business days to review and respond to the decision.

If the facility and licensee agree with the apportionment recommendation, or otherwise do not dispute the recommendation using the procedures set forth in this policy, that recommendation will be sent to the Director, HSAQIPS who will forward the decisions to the County's Third Party Claims Administrator. The amount of settlement apportioned to a potential reportable licensee, including zero, will be reported to the appropriate licensing board in accordance with Business and Professions Code Sections 801.01, et seq. The County's Third Party Claims Administrator shall prepare the appropriate documents to report said licensees to their respective boards. A copy of the report shall be forwarded to the DHS Director, the facility designee and any licensees reported.

Dispute Resolution Process

If a facility and/or licensee does not agree with the apportionment recommendation, they/he/she will be afforded the opportunity to respond, in writing, and to provide additional clarifying information for dispute resolution as described below.

The initial dispute resolution process shall be to the apportionment consultant. The licensee(s) and/or facility shall have the opportunity, after receipt of the apportionment consultant's written recommendation, to dispute the recommendation by providing written clarifying documentation. The licensee(s) and/or facility shall provide that written documentation no later than the end of the 30 business days afforded for dispute resolution to the Director, HSAQIPS. Immediately upon receipt, the Director, HSAQIPS shall provide the documents to the apportionment consultant, who will have 5 business days to review the documents provided and modify the recommendation, if appropriate. The apportionment consultant shall provide a final written recommendation at the end of this 5 business day period or sooner to the Director, HSAQIPS. This apportionment consultant's final recommendation shall be forwarded to the facility Medical Director/Nursing Director, or facility-designated group. The facility shall forward the final recommendation to each licensee.

If a licensee does not agree with the apportionment consultant's final recommendation, he/she will be afforded the opportunity, to meet with the DHS Director and to provide additional documents relevant to the apportionment decision, including explanations of systems issues to the DHS Director within 15 business days of the licensee's receipt of the apportionment consultant's recommendation. The DHS Director will make a determination within 15 business days and inform the licensee, the facility and the Director, HSAQIPS.

If the facility does not agree with the final apportionment consultant's recommendations, it will also be offered an opportunity to present its concerns to this dispute resolution process which will include meeting with the DHS Director and providing relevant documents to the DHS Director within 15 business days of receipt of the recommendation. The DHS Director will make a determination within 15 business days and inform each licensee, the facility and the Director, HSAQIPS.

If the DHS Director's determination modifies the initial or final apportionment consultant's recommendation to increase the apportionment for any licensee, that licensee will be so notified and will be afforded an opportunity to meet with the DHS Director and to provide additional documents relevant to the apportionment decision, including explanations of systems issues to the DHS Director within 15 business days of the licensee's receipt of the DHS Director's modified apportionment recommendation. The DHS Director will make a determination within 15 business days and inform the licensee, the facility and the Director, HSAQIPS.

After all above dispute resolution processes have been completed, decisions by the DHS Director will be final.

In the event the DHS Director is privy to peer review information related to the case, a designee will be appointed to act for the DHS Director in the dispute resolution as defined above. This does not prevent the DHS Director from making the final determination of an agreed upon/non-disputed apportionment recommendation, as long as he or she makes no changes in the apportionment of any licensee.

Final decisions shall be provided to the Director, HSAQIPS who will forward the decisions to the County's Third Party Claims Administrator. The amount of settlement apportioned to a potential reportable licensee, including zero, will be reported to the appropriate licensing board in accordance with Business and Professions Code Sections 801.01, et seq. The County's Third Party Claims Administrator shall prepare the appropriate documents to report said licensees to their respective boards. A copy of the report shall be forwarded to the Director, HSAQIPS, the facility designee and any licensees reported.

The current reportable limits for each licensing board are as follows:

$30,000	Medical Board of California
$30,000	Osteopathic Medical Board
$10,000	Board of Behavioral Sciences
$10,000	Board of Psychology
$10,000	Dental Board of California
$3,000	State Board of Chiropractic Examiners
$3,000	Board of Registered Nursing
$3,000	Board of Vocational Nursing and Psychiatric Technicians
$3,000	State Board of Optometry
$3,000	Physical Therapy Board of California
$3,000	Veterinary Medical Board
$3,000	Pharmacy Board
$3,000	Respiratory Care Board

References: Department of Health Services Policy # 311.1, "Licensee Reporting to Licensing Board" California Business and Professions Code, Sections 801(b), 801.1(b), 802(b), 802.3, 804, 804.5	
Approved by: Shannon Thyne (Chief Medical Officer)	Date: 08/14/2017
Review Date: 08/14/2020, 8/05, 1/08, 5/11	Revision Date: 1/08, 12/10
Distribution: Olive View Hospital-Wide Policies	
Original Date: 7/05	