

Medical Malpractice Payments: Which Entities Require Reporting

The National Practitioner Data Bank (“NPDB”) guidelines mandate, “Each entity that makes a payment for the benefit of a health care practitioner in settlement of, or in satisfaction in whole or in part of, a written claim or judgment for medical malpractice against that practitioner must report the payment information to the NPDB.”

Many practitioners are unaware, however, that individuals are not required to report to the NPDB payments they make for their own benefit. Thus, if a practitioner or other individual makes a medical malpractice payment out of personal funds, the payment should not be reported. The amount of the payment is irrelevant; there is no de minimis exception.

Previously, the NPDB had required that any and all medical malpractice payments made on behalf of a practitioner be reported. However, in 1993, the Court in *American Dental Association v. Shalala* held that an NPDB regulation requiring a report from each "person or entity" making a medical malpractice payment was invalid when applied to payments made by a practitioner on his or her own behalf, because the regulation was inconsistent with statutory language requiring any "entity" to report medical malpractice payments to the NPDB.

Notably, if funds come from the practitioner’s professional corporation, or the practitioner receives a refund from an insurer, the payment must be reported. However, medical malpractice payments made solely for the benefit of a corporation - such as a clinic, group practice, or hospital - should not be reported to the NPDB.

As to the California Medical Board, Business & Professional Code (“BPC”) Section 801.1, which outlines the requirement to report settlements of over \$30,000, does not distinguish between out-of-pocket payments and carrier payments the same way the NPDB Guidebook does. The Code only indicates any settlement over \$30,000 must be reported.

SOURCES: California Physician’s Legal Handbook, Westlaw (Reference Attorney Search of Secondary Sources, Admin Sources, and Citations re: Section 801.1), and Med Board/NPDB Websites.

For more information on this topic, please contact our office at 619.238.1712 to discuss with one of our attorneys who specialize in this area.

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