

CLIENT ALERT



KAUFMAN | GILPIN | MCKENZIE

KAUFMAN, GILPIN, MCKENZIE, THOMAS, WEISS, P.C.

DIRECT DIAL: (334) 409-2211
E-MAIL: BWILLS@KGMLEGAL.COM

SOME HOSPITALS NOT REPORTING TO NATIONAL PRACTITIONER DATA BANK

D. Brent Wills, Esq.
September 22, 2009

The consumer advocacy group *Public Citizen* recently delivered a report and letter to the United States Department of Health and Human Services (“HHS”) that indicated that hospitals and other health care entities may not be properly reporting disciplinary actions taken against physicians to the National Practitioner Data Bank (the “NPDB”).

Hospitals are required by law to make a report to the NPDB with respect to any (i) medical malpractice payment made by the hospital on behalf of a physician; (ii) professional review action taken by the hospital that adversely affects a physician’s clinical privileges for more than 30 days; and (iii) surrender of clinical privileges by a physician in return for terminating a professional review action or related investigation. Medical malpractice payments must be reported within 30 days after the date of the payment. Professional review actions must be reported within 15 days after the action becomes final, or within 15 days after the date the physician surrenders privileges.

A hospital is also required to query the NPDB (i) any time a physician applies for privileges (including temporary privileges and any expansion of privileges); and (ii) every two (2) years with respect to each physician who holds privileges or is a member of the hospital’s medical staff.

Failure to make a required report to the NPDB could subject a hospital to certain penalties, including civil monetary penalties up to \$11,000 and forfeiture of certain protections provided by federal law with respect to hospital peer review actions.

Nonetheless, the *Public Citizen* report indicates that about one-half (1/2) of hospitals have never made a report to the NPDB, and only about one-eighth (1/8) of incidents that should be reported to the NPDB are actually reported.

In addition, on or about July 30, 2009, the Division of Practitioner Data Banks, which administers the NPDB for HHS, began sending letters to hospitals that have never queried and/or never made a report to the NPDB. The ostensible purposes of the letters are to remind hospitals of their NPDB reporting obligations and gather data regarding compliance.

If your hospital receives one of these letters, or if you have any questions regarding your hospital’s obligations to make reports to the NPDB, we recommend you contact legal counsel as soon as possible. Whether or not your hospital has received a letter, if you have not already, we recommend that you establish policies and procedures to ensure that the hospital makes all mandatory queries and reports to the NPDB. Again, if you need assistance in preparing these policies and procedures, we recommend you contact legal counsel.

This Client Alert is provided by Kaufman Gilpin McKenzie Thomas Weiss, P.C. for educational and informational purposes only. It is not intended to constitute legal advice. If you require legal advice, we recommend that you contact appropriate legal counsel.

{00166546}1