

# IOM report on medical errors leads to questions about the NPDB

by Christian Shal ghan,  
Government Affairs Associate,  
Washington Office,  
Health Policy and Advocacy Department

In November 1999, the Institute of Medicine (IOM) released a report indicating that 44,000 to 98,000 hospital patients die each year because of medical errors. The report raised concerns about both the high number of deaths and the methods being used to reduce mortality. It also offered a series of recommendations to improve outcomes, including the creation of a mandatory reporting system for errors that result in "serious injury or death." Under this proposal, error reports would be made available to the public.

Following the release of the IOM report, some people asked, "Does the public have a right to know if a physician made a mistake, particularly if it resulted in a successful malpractice claim?" Taking this question one step further, some people asked, "Should the information contained in the National Practitioner Data Bank (NPDB) be made available to the public?"

## **Background**

The NPDB was established under the Health Care Quality Improvement Act of 1986, P.L. 99-660, in order to prevent physicians from moving from state to state and obtaining medical licenses without disclosure of their past performance. For a variety of reasons, the information contained in the data bank currently is unavailable to the general public. Only hospitals, health maintenance organizations (HMOs), state licensing boards, professional societies, and individual practitioners seeking to review their own

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records can obtain the information.

The Division of Quality Assurance of the Bureau of Health Professions, Health Resources and Services Administration (HRSA), U.S. Department of Health and Human Services (HHS), manages the data bank. A contractor, SRA International Inc., is responsible for its day-to-day operations. An executive committee, composed of individuals representing the various constituencies of the data bank, advises SRA on matters related to it. The College's representative on the executive committee is Norman A. Odyniec, MD, FACS, a thoracic surgeon in private practice in Chevy Chase, MD. Dr. Odyniec was recently elected vice-chair of the committee. In addition, Josef Fischer, MD, FACS, a general surgeon from Cincinnati, OH, represents the Council of Medical Specialty Societies on the committee.

The NPDB contains a history of medical malpractice payments, reportable actions related to licensure and clinical privileges, and Medicare and Medicaid exclusion imposed on physicians and other health care practitioners. At the end of 1999, there were 227,541 reports in the data bank involving 145,537 individual practitioners. Of the individuals listed, 71.9 percent of them were physicians, and 75.8 percent of all reports in the data bank concern malpractice payments.<sup>1</sup>

### **Operational problems**

Over the years, a number of concerns have been raised regarding who is and who is not included in the data bank. The two problems raised most often are use of "corporate shields" and malpractice payments for physicians in residency programs.

Some corporate health care entities have applied a "corporate shield" to protect the identities of individual physicians and other practitioners who have been named in medical malpractice claims. Specifically, some plaintiffs have agreed to dismiss individual practitioners from proceedings and instead name the corporate entity in the proceeding. This practice allows the practitioner to avoid having a malpractice payment reported to the data bank under his or her name. The College and other groups have argued that this situation creates obvious inequities for surgeons and other physicians in private and group practices who do not enjoy the protection of a larger corporate entity.<sup>2</sup>

In an attempt to correct this problem, HRSA

released a proposed rule on December 24, 1998, under which payors would decide who should be reported to the data bank based on their determination of whose acts or omission were the basis of the action or claim. While recognizing the problems related to the use of the "corporate shield," the College opposed the proposed rule because of the limitations that insurers have in drawing conclusions about individual liability. Because of these limitations, the College argued that the proposed rule leaves open the possibility that individuals could be listed in the NPDB despite the fact that they had nothing specifically to do with the case.<sup>2</sup>

In addition, the College has voiced concern that the NPDB includes reports on residents, who are frequently named in malpractice suits simply because trial lawyers often sue all possible defendants. Because residents do not have ultimate authority over patient care, the College believes they either should not be included in the data bank or at least their record should not follow them once they complete their residency. The College has urged the General Accounting Office, a congressional oversight agency, to investigate this and other issues related to the data bank.

To date, the federal government has not offered any final rules that would resolve either of these problems. These issues, along with the technical nature of the information contained in the data bank, have led the College to oppose allowing public access to the data bank.

### **For more information...**

National Practitioner Data Bank & Healthcare Integrity and Protection Data Bank Web site:  
<http://www.npdb-hipdb.com>

Massachusetts Physician Profiling System:  
<http://www.docboard.org/ma/df/masearch.htm>

Listing of all states with Physician Profiling Systems:  
<http://www.docfinder.org>

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### **Call for public access**

Despite the concerns related to the information contained in the data bank, some members of Congress have, nonetheless, raised the possibility of opening the NPDB to the public. This proposal has gained momentum following the release of the IOM report on medical errors. On March 1, 2000, the House Commerce Oversight and Investigations Subcommittee held a hearing on "Public Access to the Data Bank: What Consumers Should Know About Their Doctors." At the hearing, House Commerce Committee Chairman Tom Bliley (R-VA) said, "I believe that now is the time to open the Data Bank to the public. It is unconscionable that consumers have more comparative information about the used car that they purchase or the snack foods they eat than the doctors in whose care they entrust their health and well-being. All patients should have the right to know whether their doctor has a history of malpractice or sanctions."<sup>3</sup>

During the hearing, Rep. Fred Upton (R-MI) was much more cautionary about opening the data bank to the public. He noted that "from its inception, the data bank was intended to be an additional tool for states and hospitals and other health care providers engaged in credentialing decisions, not as a tool for use by the general public in evaluating physician competence...."<sup>4</sup>


While there was no immediate outcome from the hearing, Representative Bliley continues to investigate the possibility of opening the data bank to the public. On April 3, 2000, Mr. Bliley sent a letter to HHS Secretary Donna Shalala asking her to respond to a series of questions related to the Administration's reluctance to support opening the data bank to the public. To date, the Secretary has not responded to the letter.

### **Alternatives**

There are some alternatives to opening the NPDB to the public. For example, the Massachusetts Board of Registration in Medicine has established a physician profiling system. This Internet-based system allows users to enter a Massachusetts physician's name and determine the physician's education and training, awards and publications, insurance plans accepted, and malpractice and disciplinary histories. The malpractice information contains an assortment of disclaimers and contextual information. For example,

each physician's record notes that malpractice histories tend to vary by specialty, and that some doctors work primarily with high-risk patients and, thus, may have more extensive malpractice histories. In addition, each report contains the number of physicians in Massachusetts who are licensed in the same specialty, as well as the number of those who made malpractice payments in the past 10 years.

Other states have developed similar programs. While all of these states provide information on a physician's education and training, most of them do not offer the detailed malpractice history that is available through the Massachusetts system.

As the policymakers, health care professionals, and the public begin to digest the findings from the IOM report and determine appropriate next steps, it may be appropriate to provide more information to the public about their physicians. Should policymakers determine that greater physician information should be available to the public, they will need to define both the information patients need and the manner in which patients should receive that information. As Representative Upton stated during the hearing, "The malpractice information contained in the bank, for example, could be quite misleading to those not trained in its interpretation."<sup>5</sup> 

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### **References**

1. *National Practitioner Data Bank 1999 annual report*. Rockville, MD: US Department of Health and Human Services, January 2000.
2. Written correspondence to Mr. Neil Sampson, Bureau of Health Professions, from Samuel Wells, MD, FACS, ACS Director, February 1999.
3. Testimony from Rep. Thomas Bliley, House Commerce Committee's Oversight and Investigation Subcommittee Hearing, March 1, 2000.
4. Testimony from Rep. Fred Upton, House Commerce Committee's Oversight and Investigation Subcommittee Hearing, March 1, 2000.