

## ATTACHMENT L

### PUBLIC HEALTH LAW AND REGULATIONS

#### Public Health Law

§ 2995-a. Physician profiles. 1. The department shall collect the following information and create individual profiles on licensees subject to the authority of the office of professional medical conduct, in a format that shall be available for dissemination to the public:

(a) a statement of any criminal convictions (as defined by section 1.20 of the criminal procedure law) within the most recent ten years, under the laws of New York state or any other jurisdiction, for offenses specified by regulations of the department;

(b) a statement of any action (other than an action that remains confidential) taken against the licensee pursuant to section two hundred thirty of this chapter or any similar action taken by any other state or licensing entity, within the most recent ten years;

(c) a statement of any current limitation of the licensee to a specified area, type, scope or condition of practice;

(d) a statement of any loss or involuntary restriction of hospital privileges or a failure to renew professional privileges at hospitals within the last ten years, for reasons related to the quality of patient care delivered or to be delivered by the physician where procedural due process has been afforded, exhausted, or waived, or the resignation from or removal of medical staff membership or restriction of privileges at a hospital taken in lieu of a pending disciplinary case related to the quality of patient care delivered or to be delivered by the physician (notwithstanding paragraph (a) of subdivision three of section twenty-eight hundred three-e of this chapter, as added by chapter eight hundred sixty-six of the laws of nineteen hundred eighty);

(e) (i) a statement indicating the number of medical malpractice court judgments and arbitration awards within the most recent ten years in which a payment is awarded to a complaining party (notwithstanding subsection (f) of section three hundred fifteen of the insurance law); and

(ii) a statement indicating all malpractice settlements within the most recent ten years in which payment is awarded to a complaining party (notwithstanding subsection (f) of section three hundred fifteen of the insurance law),

(A) if the total number of settlements exceeds two; or

(B) if the commissioner determines any such settlement could be relevant to patient decisionmaking concerning health care quality. The statement shall include the following: "Settlement payments will appear in this profile only if the total number of settlements made within the

past ten years exceeds two, or if the commissioner of health determines a settlement to be relevant to patient decisionmaking. Settlement of a claim may occur for a variety of reasons, which do not necessarily reflect negatively on the professional competence or conduct of the physician. A payment in settlement of a medical malpractice action or claim does not necessarily mean that a medical malpractice has occurred." The commissioner may supplement such statement as may be appropriate.

(iii) judgments, awards and settlements shall be reported in graduated categories indicating the level of significance, date and place of the judgment, award or settlement. Information concerning medical malpractice judgments, awards and settlements shall be put in context by comparing an individual licensee's medical malpractice settlements to the experience of other physicians in New York state within the same board specialty. Pending malpractice claims shall not be disclosed to the public under this section. Nothing herein shall be construed to prevent the board from investigating or disciplining a licensee on the basis of medical malpractice claims that are pending;

(f) name of medical schools attended and date of graduations;

(g) graduate medical education;

(h) current specialty board certification and date of certification;

(i) dates admitted to practice in New York state;

(j) names of hospitals where the licensee has practice privileges;

(k) appointments to medical school faculties and indication as to whether a licensee has had a responsibility for graduate medical education within the most recent ten years;

(l) information regarding publications in peer reviewed medical literature within the most recent ten years;

(m) information regarding professional or community service activities or awards;

(n) (i) the location of the licensee's primary practice setting identified as such; and

(ii) the names of any licensed physicians with whom the licensee shares a group practice, as defined in subdivision five of section two hundred thirty-eight of this chapter;

(o) the identification of any translating services that may be available at the licensee's primary practice location;

(p) whether the licensee participates in the medicaid or medicare program or any other state or federally financed health insurance program; and

(q) health care plans with which the licensee has contracts, employment, or other affiliation.

1-a. Each physician licensed and registered to practice in this state shall within thirty days of the transmittal of an initial profile survey and upon entering or updating his or her profile information:

(a) register and maintain an account with the department's health

provider network and any successor electronic system established to facilitate communications between the department and licensed health care providers; or

(b) provide an e-mail address to the department which shall be used by the department to communicate with the physician. Licensees shall provide notice to the department of changed e-mail addresses within thirty days of the change. Licensee e-mail addresses shall be confidential and shall not be published as part of the licensee's profile. The e-mail addresses may be used for department purposes only.

2. Nothing in this section shall limit the department's authority to collect, require reporting of, publish or otherwise disseminate information about licensees.

3. Each physician who is self-insured for professional medical malpractice shall periodically report to the department on forms and in the time and manner required by the commissioner the information specified in paragraph (e) of subdivision one of this section, except that the physician shall report the dollar amount (to the extent of the physician's information and belief) for each judgment, award and settlement and not a level of significance or context.

4. Each physician shall periodically report to the department on forms and in the time and manner required by the commissioner any other information as is required by the department for the development of profiles under this section which is not otherwise reasonably obtainable. In addition to such periodic reports and providing the same information, each physician shall update his or her profile information within the six months prior to the expiration date of such physician's registration period, as a condition of registration renewal under article one hundred thirty-one of the education law. Except for optional information provided, physicians shall notify the department of any change in the profile information within thirty days of such change.

5. The department shall provide each licensee with a copy of his or her profile prior to dissemination to the public. In the manner and time required by the commissioner, a licensee shall be provided the opportunity to correct factual inaccuracies that appear in the profile. The physician shall be permitted to file a concise statement concerning information contained in the profile, which shall be disseminated therewith.

6. A physician may elect to have his or her profile omit certain information provided pursuant to paragraphs (l), (m), (n) and (q) of subdivision one of this section. In collecting information for such profiles and disseminating the same, the department shall inform physicians that they may choose not to provide such information required pursuant to paragraphs (l), (m), (n) and (q) of subdivision one of this section.

7. A physician who knowingly provides materially inaccurate information under this section shall be guilty of professional

misconduct pursuant to section sixty-five hundred thirty of the education law.

8. The department shall establish a toll-free telephone number through which it shall answer inquiries about and accept orders for hard copy physician profiles established pursuant to this section and accept consumer complaints about suspected professional misconduct. The department may charge a nominal fee for producing and mailing a hard copy physician profile.

9. The department shall, in addition to hard copy physician profiles, provide for electronic access to and copying of physician profiles developed pursuant to this section through the system commonly known as the Internet. The department shall update a physician's online profile within thirty days of receipt of a completed physician profile survey or any change in profile information.

10. The commissioner shall require that:

(a) Practitioner organizations that are representative of the target group for profiling, and health care consumer organizations, be provided the opportunity to review and comment on the profiling methodology, including collection methods, analysis, formatting, and methods and means for release and dissemination.

(b) Comparisons of practitioner profiles shall be organized according to practitioner areas of practice.

11. The commissioner shall evaluate the utility and practicability of including in the profile a comparison of malpractice data by geographic area. However, the implementation of the profile shall not be delayed pending such evaluation.

12. The commissioner shall develop and distribute a notice suitable for posting that informs consumers of the availability of physician profiles and the telephone numbers and Internet addresses for accessing them.

13. Further study of physician profiles. After the initial dissemination of the data identified in subdivision one of this section, the department shall conduct a further study of physician profiles as follows:

(a) Data sources. The department shall identify the types of physician data to which the public has access, including all information available from federal, state or local agencies which is useful for making determinations concerning health care quality determinations. The department shall study all physician data reporting requirements and develop recommendations to consolidate data collection and eliminate duplicate and unnecessary reporting requirements, or to supplement existing reporting requirements in order to satisfy the requirements of this section. The department shall study the feasibility of incorporating health plan reporting requirements, without imposing any extra burden on the physician, regarding network participation into this section to ensure this information is available, accurate, up-to-date

and accessible to consumers.

(b) Supplemental information adjustment and security safeguards. The department shall develop a methodology for application to collected physician data that accounts for factors such as frequency, severity and geographic area which shall be used to provide context to reported data. Any such methodology shall not diminish the information reported pursuant to subdivision one of this section. In developing such methodology, the department may consult with physicians, including representatives of appropriate specialty societies. The department may also consult with organizations representing consumers, other health care providers, and health care plans. Any such methodology shall include adequate and appropriate safeguards to ensure the security, accuracy and integrity of health information created, received, maintained, used or transmitted in connection with the statewide health information system. Such safeguards shall be sufficient to meet any minimum standards set by state and federal laws and regulations.

(c) Public review. The department shall provide organizations which are representative of consumers, physicians, including representatives of appropriate specialty societies, other health care providers and health care plans the opportunity to review and comment on its determinations and recommendations. The department shall consider such comments, and may amend its determinations and recommendations to reflect them.

(d) Report. The department shall provide a report of its determinations and recommendations under this subdivision to the governor and legislature, and make such report publicly available, on or before January first, two thousand sixteen. The department shall report annually thereafter to the legislature on the status of the physician profiles and any recommendations for additions, consolidations or other changes deemed appropriate.

14. The physician data so disseminated shall be updated at regular intervals to be determined by the department.

15. (a) All physician data disseminated shall include the following statements: "THE DATA COLLECTED BY THE DEPARTMENT IS ACCURATE TO THE BEST OF THE KNOWLEDGE OF THE DEPARTMENT, BASED ON THE INFORMATION SUPPLIED BY THE PHYSICIAN WHO IS THE SUBJECT OF THE DATA. WHILE THE DEPARTMENT UTILIZES A VARIETY OF SOURCES OF INFORMATION IN CHECKING THE ACCURACY OF THE DATA REPORTED, WE CANNOT BE SURE THAT ALL OF THE INFORMATION ON THIS WEBSITE IS RIGHT, COMPLETE, OR UP-TO-DATE, AND

CANNOT BE RESPONSIBLE FOR ANY INFORMATION THAT IS WRONG OR HAS BEEN LEFT

OUT. CONSUMERS ARE ENCOURAGED TO CONSULT OTHER SOURCES TO VERIFY OR

OBTAIN ADDITIONAL INFORMATION ABOUT A PHYSICIAN. PENDING LEGAL ACTIONS

DO NOT IN ANY WAY INDICATE PARTIES' GUILT, LIABILITY OR CULPABILITY. CASES MAY BE DISMISSED, WITHDRAWN, OR SETTLED WITHOUT PAYMENTS TO

PLAINTIFFS. ANY DISPOSITION TO A CASE MAY BE SUBJECT TO APPEAL." The commissioner shall ensure that the full text of the statements appear on each web page of the physician profile in a manner that does not require the user of the site to click on a separate link in order to view the statements.

(b) The department shall provide on the physician profiles an active link to the website maintained by the unified court system containing information on active and disposed cases in the local and state courts in the state.

16. If, after initial dissemination of the physician data required by this section, the department determines that any such data is not useful for making quality determinations, the department shall recommend to the legislature the necessary statutory changes.

## **OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK**

### **TITLE 10. DEPARTMENT OF HEALTH CHAPTER IX. PHYSICIAN PROFILING PART 1000. PHYSICIAN PROFILES**

#### **1000.1 Definitions.**

For purposes of making individual physician profiles available for dissemination to the public, pursuant to the provisions of section 2995-a of the Public Health Law, the following definitions shall apply:

(a) *Board certification* means a specialty or subspecialty in which a physician is certified by the American Board of Medical Specialties (ABMS), American Osteopathic Association (AOA), or Royal College of Physicians and Surgeons of Canada (RCPSC).

(b) *Concise statement* means a typewritten statement not exceeding 1,000 words which relates solely to information contained in the physician's profile. Statements which include the following prohibited language shall not be published with a physician's profile:

(1) potentially defamatory information that includes names of specific individuals or groups of individuals or any potentially defamatory information that could result in identification of an individual or individuals other than the physician who is making the concise statement;

(2) General statements relating to physician disciplinary or judicial processes; or

(3) Statements that do not relate to the factual information contained in the physician's profile.

(c) *Graduate medical education* means a graduate medical education program accredited by the Accreditation Council for Graduate Medical Education (ACGME), American Osteopathic Association (AOA), Royal College of Physicians and Surgeons of Canada

(RCPSC) or the College of Family Physicians of Canada (CFPC).

(d) *Loss or involuntary restriction of hospital privileges or failure to renew professional privileges at hospitals for reasons related to the quality of patient care delivered* means the loss or involuntary restriction of hospital privileges or failure to renew professional privileges at hospitals for reasons including, but not limited to:

(1) Incompetence in providing direct patient care;

(2) Sexual abuse or harassment of hospital staff or patients;

(3) Disciplinary actions taken because of professional misconduct in any state related to the quality of patient care delivered;

(4) Commission of crimes related to the quality of patient care delivered; and

(5) Lack of maintaining accurate medical records.

(e) *Physician profile* means information collected on physicians currently licensed and registered in New York State that shall be available for dissemination to the public in accordance with section 2995-a of the Public Health Law.

(f) *Place* means, for purposes of reporting malpractice award, judgment, and settlement information, the geographic location where the injury occurred as a result of the malpractice or alleged malpractice, office practice location of the particular physician at the time of the malpractice or alleged malpractice, or county in which the malpractice award or judgment is filed. The department shall specify which of such places shall be included on reports required to be submitted by medical malpractice insurance companies or hospitals self-insured for professional medical malpractice in accordance with section 315 of the Insurance Law.

(g) *Within the most recent 10 years* means:

(1) For purposes of physician self-reporting, the period beginning 10 years prior to January 1, 2002 or the date the department initially collects information from a licensed registered physician, whichever is later; and

(2) For purposes of public dissemination of physician profiles, the period beginning 10 years prior to the day a physician profile is being made available for dissemination to the public

## **1000.2 Criminal convictions.**

(a) The department shall collect and make available to the public, and physicians shall submit, if applicable, information regarding criminal convictions within the most recent 10 years for any and all offenses under the laws of New York State or any other jurisdiction.

(1) *Offenses* shall include only felonies or misdemeanors, as defined under the laws of the jurisdiction within which such felonies or misdemeanors take place.

(2) *Conviction* means the entry of a plea of guilty to, or a verdict of guilty upon, an accusatory instrument other than a felony complaint, or to one or more counts of such instrument, as defined in section 1.20 of the Criminal Procedure Law.

(b) Physicians shall submit to the department, if applicable, information regarding criminal convictions within the most recent 10 years that includes:

(1) name of the offense;

(2) state, province or country in which the conviction occurred; and

(3) date of conviction.

### **1000.3 Malpractice awards, judgments and settlements**

(a) Collection.

The department shall collect and physicians shall submit, if applicable, the following information regarding all medical malpractice court judgments, arbitration awards and malpractice settlements within the most recent 10 years in which a payment has been awarded or made to a complaining party:

(1) date of each award, judgment or settlement, determined as follows:

(i) for arbitration awards, the date the arbitrator issued the award;

(ii) for judgments, the date of entry of the judgment; and

(iii) for settlements, the date of entry of the stipulation or, if no entry, the last date on which any person signed the settlement document;

(2) date payment was made or date claim was closed. The date a claim was closed is the date entered by an insurance company or third party reporter that the claim is resolved;

(3) amount of each award, judgment or settlement;

(4) place(s) of each award, judgment or settlement as specified by the department in accordance with section 1000.1(f) of this

Part; and

(5) any other information deemed necessary by the department to implement the provisions of this subdivision.

**(b) Public dissemination.**



(1) The department shall make available to the public information collected in accordance with subdivision (a) of this section regarding:

- (i) all medical malpractice court judgments and arbitration awards within the most recent 10 years in which a payment has been awarded or made to a complaining party; and
- (ii) malpractice settlements which exceed two in number within the most recent 10 years in which a payment has been awarded or made to a complaining party.

(2) In the case where the total number of malpractice settlements is two or fewer, the department shall make available to the public information collected in accordance with subdivision (a) of this section in those cases where it is alleged that a malpractice event resulted in death or permanent injury, and where the department has considered any information submitted in accordance with subparagraph (ii) of this paragraph.

(i) *Permanent injury* shall include, but not be limited to, the following:

- (a) loss of finger or fingers;
- (b) loss or permanent damage to organ or organs;
- (c) deafness;
- (d) loss of any limb or limbs;
- (e) loss of eyes or eyesight;
- (f) loss of kidney or kidneys;
- (g) loss of lung or lungs;
- (h) paraplegia;
- (i) brain damage;
- (j) quadriplegia;
- (k) severe brain damage;
- (l) lifelong care;
- (m) fatal prognosis;
- (n) any permanent loss or impairment (unable to function at same level prior to occurrence) of body part;
- (o) any permanent loss or impairment of bodily function;
- (p) any permanent physical or mental impairment that substantially limits one or more of the major life activities of an individual; or
- (q) death.

For purposes of this subparagraph, the Department of Health may use information collected in accordance with section 315 of the Insurance Law, including information relating to death or the seriousness of injury, or self-reported by physicians as required by subdivision (3) of section 2995-a of the Public Health Law.

(ii)

(a) A physician may provide additional factual clinical information pertinent to the department's determination of whether settlement information is relevant to patient decisionmaking. Such information, if provided, will be reviewed by a panel appointed by the department to conduct such reviews. The panel is comprised of at least three persons, the majority of whom are physicians, at least one of whom is a physician of the same specialty as the physician whose settlement is under review. The panel shall

submit its recommendation to the Commissioner of Health regarding whether, based upon the information provided by the physician whose settlement is under review, the settlement is relevant to patient decisionmaking. The recommendation of the panel that a settlement is not relevant for patient decisionmaking shall be predicated upon a preponderance of clinical information indicating that, despite the awarding of a payment to a complaining party, appropriate provision of patient care was provided.

(b) Additional clinical information provided by a physician must be received by the department postmarked within 30 days of the date of the letter transmitting the physician's medical malpractice review copy as specified in section 1000.4

(c) of this Part. Requests for an extension of the 30-day period will be considered only if they:

(1) are in writing and received by the department or its agent within the 30-day period or received orally by the department or its agent within the 30-day period followed by a written request for the extension postmarked within five days of the department receiving the oral request or the expiration of the 30-day period, whichever is later;

(2) include the reason(s) why the extension is needed, which must be related to circumstances that are beyond the physician's control; and

(3) indicate the amount of additional time needed.

(b) This clause does not obligate the department to grant extensions. Further, the department may deny any request received beyond the required time frames or missing information required by subclauses (1)-(3) of this clause. Public dissemination of medical malpractice settlement information will be suspended while the department is reviewing the request for an extension. The department will notify the physician in writing of its decision to either grant or deny an extension.

(iii) Consumers shall be advised by the department on a physician profile to contact the physician for more information regarding malpractice awards, judgments and settlements in order to facilitate patient decisionmaking concerning health care quality.

(3) Public dissemination of information regarding medical malpractice judgments, arbitration awards, and settlements under this section shall be made in graduated categories indicating whether the payment award is average, above average or below average, as set forth in subparagraph (i) of this paragraph, in comparison to other payment awards made to complaining parties within the same specialty. For purposes of this paragraph, *specialty* shall mean a specified area of medical practice including, but not limited to, anesthesiology, family practice, internal medicine, obstetrics and gynecology, pediatrics, physical medicine and rehabilitation, psychiatry, radiology and general surgery. For purposes of comparing payment awards, the department may calculate average, above average and below average amounts, and periodically update them, at least annually, based upon the most recent malpractice payment award information submitted to the department by medical malpractice insurance companies or hospitals self-insured for professional medical malpractice in accordance with section 315 of the Insurance Law, consistent with geographic areas of the State used by the Insurance Department to establish medical malpractice insurance premiums, as set forth in subparagraph (ii) of this paragraph. Average, above average, and below average amounts are based upon quartiles.

Quartiles are developed by taking all claims for doctors within a certain specialty in a certain geographic region and dividing them, lowest to highest, into four groups (quartiles) of equal numbers.

(i)

(a) An *average payment award* means a payment award amount falling in the middle two quartiles of payment award amounts for a certain specialty in a certain geographic region.

(b) A *below average payment award* means a payment award amount falling in the lowest quartile of payment award amounts for a certain specialty in a certain geographic region.

(c) An *above average payment award* means a payment award amount in the highest quartile of payment award amounts for a certain specialty in a certain geographic region.

(ii)

(a) If there are at least eight claims in each of four regions, quartiles will be developed for each of four regions for a particular specialty as follows:

Region A = New York, Orange, Rockland, Sullivan, Westchester, Bronx, Kings, Queens, Richmond, Nassau and Suffolk Counties

Region B = Columbia, Dutchess, Greene, Putnam and Ulster Counties

Region C = Erie and Niagara Counties

Region D = All Other Counties

(b) If there are an insufficient number of claims to develop quartiles for each of four regions as specified in clause (a) of this subparagraph, then quartiles will be developed for each of two regions for a specialty if there are at least eight claims in each of two regions as follows:

Downstate = Region A

Upstate = Combined Regions B, C, and D

(c) If there is an insufficient number of claims to develop quartiles for downstate and upstate, quartiles will be developed on a statewide basis for a specialty

#### **1000.4 Collection of initial profile information.**

(a) The department shall send an initial profile survey to every currently or newly State licensed and registered physician in New York State which reflects all the data elements required by Public Health Law, section 2995-a(1), some elements of which shall be prepared by the department using data sources other than the physician. Such initial profile survey must be completed, signed and returned by each physician to the address designated by the department on the survey and postmarked within 30 days of the date of the letter transmitting such initial profile survey to the physician.

(b) Physicians shall be given the opportunity to correct factual inaccuracies that appear in the profile. Once the department receives a physician's completed and signed initial profile survey and enters the data into the physician profile database, the department will provide to the physician a copy of his or her profile in the form to be used for public dissemination, hereafter referred to as the review copy, prior to such public dissemination. The physician shall note any corrections on the review copy and return it

to the department signed and postmarked within 10 days of the date of the letter transmitting the review copy to the physician; otherwise, the department will publicly disseminate the physician's profile information as received on the physician's initial profile survey.

(c) Subsequent to receiving the physician's review copy, if returned within the time frame required by subdivision (b) of this section, the department will provide to the physician a copy of any medical malpractice information in the form to be used for public dissemination, hereafter referred to as the medical malpractice review copy. Physicians shall correct any factual inaccuracies on the medical malpractice review copy and return it to the department postmarked within 10 days of the date of the letter transmitting the medical malpractice review copy to the physician, or, in the instance where the physician has two or fewer medical malpractice settlements over the most recent 10-year period and opts to access the panel review process, shall provide additional factual clinical information pursuant to section 1000.3(b)(2)(ii) of this Part. If the physician does not respond in accordance with the timeframes set forth in this subdivision, the department will publicly disseminate the physician's medical malpractice information provided on the medical malpractice review copy.

#### **1000.5 Updating self-reported information.**

(a) Except for optional information provided on physician profiles, physicians shall notify the department of any change in profile information within 30 days of such change. Any change in optional information must be reported to the department within 365 days of such change.

(b) Physicians shall submit changes to physician profile information either electronically using the department's secure web site or on forms prescribed by the department. Physicians shall attest to the truthfulness, completeness and correctness of any changes submitted to the department.