

<b>Policy Title: Reporting Malpractice Payments and Professional Review Actions to The National Practitioner Data Bank (NPDB)</b>	<b>Policy Number: 6226-02-E-1</b>
<b>Owner Department: Professional Competency Department</b>	<b>Effective Date: 09/07/2023</b>
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## 1.0 Policy Statement

It is the policy of KFHP, KFH, and HPMG to report medical malpractice payments made and professional review actions taken in compliance with the federal Health Care Quality Improvement Act of 1986 and implementing regulations.

## 2.0 Purpose

Kaiser Permanente is composed of three separate legal entities, Kaiser Foundation Health Plan, Inc. (KFHP), Kaiser Foundation Hospitals (KFH), and the Hawaii Permanente Medical Group, Inc. (HPMG). Depending on applicable circumstances, these entities, individually, may be required by federal law and regulation to submit reports to the National Practitioner Data Bank (NPDB) and/or the Hawaii State Board of Medical Examiners regarding medical malpractice payments made and professional review actions taken.

This policy describes the responsibility and accountability for preparation and submission of reports required by the Health Care Quality Improvement Act of 1986 to the NPDB and Hawaii State Board of Medical Examiners.

## 3.0 Scope

This policy applies to all Licensed Independent Practitioners (LIP) and Allied Health Practitioners (AHP)\* applying for participation with Kaiser Foundation Health Plan, Inc. (KFHP), Kaiser Foundation Hospitals (KFH), and the Hawaii Permanente Medical Group, Inc. (HPMG), collectively "Kaiser Permanente Hawaii Region", and also in a facility that is owned, rented, managed or leased by KFHP, KFH, or HPMG.

\*LIP and AHP may be an employee of Kaiser Permanente Hawaii Region, collectively, or on a contracted basis."

## 4.0 Definitions

**4.1 Professional Review Action** means an action or recommendation of a health care entity:

- 4.1.1** Taken in the course of professional review activity;
- 4.1.2** Based on the professional competence or professional conduct of a physician or other licensed health care practitioner which affects or could affect adversely the health or welfare of a patient or patients; and
- 4.1.3** Which adversely affects or may adversely affect the clinical privileges of the licensed independent practitioner or other health care practitioner.
- 4.1.4** This term excludes actions which are primarily based on:
  - 4.1.4.1** The licensed independent practitioner's association, or lack of association, with a professional society or association;
  - 4.1.4.2** The physician's dentist's, or other health care practitioner's fees or the physician's, dentist's, or other health care practitioner's advertising or engaging in other competitive acts intended to solicit or retain business;

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**4.1.4.3** The physician’s, dentist’s, or other health care practitioner’s participation in prepaid group health plans, salaried employment, or any other manner of delivering health services whether on a fee-for- service or other basis;

**4.1.4.4** A physician’s, dentist’s, or other health care practitioner’s association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice with a member or members of a particular class of health care practitioner or professional; or

**4.1.4.5** Any other matter that does not relate to the competence or professional conduct of a licensed independent practitioner.

**4.2 Health Care Entity** means:

**4.2.1** A hospital; or

**4.2.2** An entity, including a health maintenance organization or group medical practice, that provides health care services and that follows a formal peer review process for the purpose of furthering quality health care, or a committee of that entity.

**4.3 Adverse Actions** means reducing, restricting, suspending, revoking, or denying clinical privileges or membership in a health care entity.

**4.4 Clinical Privileges** means the authorization of a health care licensed independent practitioner for the provision of health care services, including privileges and membership on the medical staff.

**5.0 Provisions**

**5.1 Reportable Actions**

**5.1.1 Medical Malpractice Payments**

**5.1.1.1** Each entity (KFHP, KFH, or HPMG) that makes a payment under a policy of insurance, self-insurance, or otherwise, for the benefit of a physician or other licensed health care practitioner in settlement of, or in satisfaction in whole or in part of, a medical malpractice claim or judgment against that practitioner, must report the payment information to the NPDB and to the appropriate State licensing board(s) in the State in which the act or omission upon which the medical malpractice claim or action was based. Detailed guidance regarding reportable payments is contained in the National Practitioner Data Bank Guidebook. Legal guidance should also be sought.

**5.1.1.2** A payment in settlement of a medical malpractice action or claim shall not be construed as creating a presumption that medical malpractice has occurred.

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### **5.1.2 Adverse Actions on Clinical Privileges**

KFHP, KFH, HPMG must report to the NPDB in the following situations:

- 5.1.2.1** Any professional review action that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or
- 5.1.2.2** Acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or privileged health care practitioner;
- 5.1.2.3** While the privileged health care practitioner is under investigation by the health care entity relating to possible incompetence or improper professional conduct; or
- 5.1.2.4** In return for not conducting such an investigation or proceeding.

Additionally, where required, a reportable action taken or proposed against a physician or dentist based upon an adverse action on privileges, as defined in this policy, will be reported to all other appropriate agencies in accordance with applicable legal requirements.

## **5.2 Responsibility**

### **5.2.1 Medical Malpractice Payments**

- 5.2.1.1** The Director of Claims Management, under the direction of the Medical Director, HPMG and the President, KFHP/KFH, and in consultation with legal counsel as necessary, is responsible for determining whether a medical malpractice payment is reportable to the NPDB. For payments determined to be reportable, the information necessary for completion of the report shall be provided to the Professional Competency Department within ten (10) days of the date payment is made with respect to the physician(s), dentist(s), or other health care practitioner(s) for whose benefit the payment is made.
- 5.2.1.2** The Professional Competency Department shall, for those payments for which they are notified by the Director of Claims Management, within twenty (20) days of the date of payment made, prepare a report to the National Practitioner Data Bank and Hawaii State Board of Medical Examiners. The report shall be prepared per guidance and instruction contained in the most current National Practitioner Data Bank Guidebook. Upon review and approval by the Senior Vice President, KFHP/KFH and/or Medical Director, HPMG, the Professional Competency Department shall forward the report to these entities within thirty (30) days of the date

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payment is made. A copy of the report sent shall be given to the reported practitioner(s).

**5.2.1.3** The Professional Competency Department is responsible for preparing any corrections, revisions, or retraction reports to the NPDB and Hawaii State Board of Medical Examiners, as circumstances may warrant, under the direction of the Senior Vice President, KFHP/KFH or HPMG Medical Director, as appropriate.

**5.2.1.4** The Professional Competency Department will incorporate a copy of all reports submitted to or received by the National Practitioner Data Bank into the practitioner(s)' Peer Review file. A log of all reports provided to the NPDB and Hawaii State Board of Medical Examiners shall be retained by the Professional Competency Department. The Professional Competency Department shall also forward copies of reports to Claims Management for incorporation into the case file for which payment was reported.

## **5.2.2 Professional Review Actions**

**5.2.2.1** Chiefs and the Chairperson of the Credentials and Privileges Committee (a peer review committee) shall report all professional review actions which may adversely affect the clinical privileges of a privileged health care practitioner for more than 30 days or the acceptance of the surrender of clinical privileges or any restriction of such privileges by a privileged health care practitioner while the privileged health care practitioner is under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding to the Hospital Administrator, the HPMG Medical Director and the President,

**5.2.2.2** KPHP/KFH: These individuals, in consultation with legal counsel, will determine when a professional review action is reportable to the Hawaii State Board of Medical Examiners.

**5.2.2.2.1** If an action is determined to be reportable, the President, KFHP, Medical Director, HPMG, and/or KFHP Hospital Administrator will request a report to be prepared by the Professional Competency Department. Actions reported only by KFHP shall be signed by the Hospital Administrator. Actions reported only by the HPMG shall be signed by the Medical Director. Actions reported only by KFHP shall be signed by the President, KFHP. Joint actions shall be signed by the Medical Director, HPMG and/or the President, KFHP/KFH,

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as appropriate. Once a determination is made that an action is reportable, reports must be submitted to the Hawaii State Board of Medical Examiners within fifteen (15) days from the date the action was taken or clinical privileges were voluntarily surrendered.

**5.2.2.3** The Professional Competency Department will incorporate a copy of all reports sent or received from the National Practitioner Data Bank into the practitioner(s)' Peer Review file. A log of all reports provided to the NPDB and Hawaii State Board of Medical Examiners shall be retained by the Professional Competency Department.

**5.2.2.4** The Professional Competency Department is responsible for preparing any corrections, revisions, or retraction reports to the NPDB and Hawaii State Board of Medical Examiners, as circumstances may warrant, under the direction of the President, KFHP/KFH or HPMG Medical Director, as appropriate.

### **5.2.3 Information to Be Provided**

**5.2.3.1** The National Practitioner Data Bank guidebook should be used as authority regarding detailed reporting instructions. The information herein is summary information about information to be provided to the NPDB as well as internal Kaiser Permanente processes for gathering the appropriate information and providing it to individuals with responsibility for preparation of reports.

## **6.0 Legal Status and Confidentiality of the Committee**

The professional review actions, adverse actions on clinical privileges, and peer review procedures described in this policy are peer review committee procedures for evaluation of practitioner performance and are subject to all protections for the peer review committee process under State and Federal law. All other applicable privileges are also expressly preserved, including all self-critical privileges and attorney-client privilege. The proceedings, communications and records of the peer review committees are confidential and privileged from discovery and shall not be disclosed outside this procedure, unless disclosure is required or allowed under applicable law and is approved by Kaiser's legal counsel. These procedures are designated and intended to provide the fullest protection from civil liability and discoverability of peer review activities. Nothing in these procedures or related peer review policies of any Kaiser entity is intended or shall be deemed to waive the fullest peer review protections afforded under State and Federal law.

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## 7.0 Maintenance

This policy shall be reviewed at least annually to assure continuing relevance and compliance with regulatory and accrediting standards, hospital bylaws, rules and regulations, and legal statutes.

## 8.0 References

- 8.1** This policy and procedure is governed by the federal Health Care Quality Improvement Act of 1986, Title 42, United States Code, sections 11101 et. seq., as implemented by Department of Health and Human Services regulations, 45 Code of Federal Regulations, Part 60. Additional guidance is provided in the National Practitioner Data Bank Guidebook.

## 9.0 Hawaii Market Endorsement and Approval:

Contact Person:	Brian McClendon Manager, Professional Competency Department (Credentials)	Date: 09/07/2023
Reviewed by:	Matthew Karpan HPMG Legal	Date: 09/07/2023 Date: 09/20/2022
Endorsed by:	Credentials & Privileging Committee HPMG Leadership Council	Date: 09/07/2023 Date: 09/21/2022
Approved by:	David Bell, MD as proxy for John Yang, MD, HPMG President and Medical Director  Hospital Executive Committee Quality Committee	Date: 09/21/2022  Date: 08/23/2021 Date: 08/12/2021
Last Review:	09/07/2023	
Next Review:	09/07/2024	

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**Policy Life History**

<b>Action<sup>(1)</sup></b>	<b>Approval</b>	<b>Effective</b>
Original	04/01/1995	04/01/1995
Revision	04/17/2008	04/17/2008
Update	02/08/2018	02/08/2018
Revision	08/12/2021	08/12/2021
Update	09/21/2022	09/21/2022
Update	09/07/2023	09/07/2023

<sup>(1)</sup> Update = No material change to the policy content, policy is reviewed and renewed with no, or non-material changes. Revision = Material change is included in the renewed policy.

**Workplace Safety Key Points (WSKP) are included in this document for your protection**

1. Always use Standard Precautions including Personal Protective Equipment (PPE) when handling any blood/body fluid, liquids, and chemicals (e.g. disinfectant) or when handling spills.
2. Handwashing is the single most effective means of controlling the spread of infection; remember to always **WASH YOUR HANDS.**
3. Dispose of sharps according to policy and procedure. **NO NEEDLE RECAPPING.**
4. Exercise caution when changing full sharps containers.
5. When lifting, bend at the hips and/or knees and keep your back straight.
6. Push, rather than pull. It is easier to utilize your weight advantage when pushing.
7. Use a step ladder or non-wheeled step stool for out-of-reach items. Do not use chairs.
8. Know your spill procedure and the location of your MSDS forms.
9. Ensure your work area is ergonomically correct.