

The Licensee Information Pages: A Guide to Reporting Adverse Information

In early December 2009, the North Carolina Medical Board joined approximately 28 other state physician regulatory boards in providing the public with more comprehensive, professional and legal information on the Board's website about the MDs, DOs and PAs it licenses. The Licensee Information Page is a useful marketing tool for the state's practitioners, allowing the licensee to showcase, among other things, areas of practice, awards, honors and professional distinctions on a reliable, non-commercial website that receives approximately 3,600 "hits" daily.

A small number of practitioners—less than roughly five percent of the state's MDs, DOs and PAs—will have adverse information on the website. Under recent changes to the Medical Practice Act and the Board's rules¹, the Board will publish certain criminal convictions, disciplinary actions by licensing boards and agencies, malpractice history, and adverse privileging actions. Following is detailed guidance for those licensees who must update their Licensee Information Page to include adverse information. To update your Licensee Information Page visit www.ncmedboard.org and click on "Update Licensee Info" in the green "Quick Links" box.

Criminal Convictions

Licensees have long been required to report criminal convictions on their annual renewal. Now, some of those convictions must be reported within 60 days of the conviction and will be posted on the Board's website.

"Conviction" Defined

21 NCAC 32X .0101 defines "conviction" as "pled guilty, found guilty by a court of competent jurisdiction, or entered a plea of nolo contendere." Convictions by courts martial and special courts should also be reported.

Felonies

Under N.C.G.S. §90-5.2(a) (10), all felony convictions must be reported to the Board within sixty days of the date of conviction. Licensees must disclose the date of conviction, the nature of the conviction, the jurisdiction in which the conviction occurred, the sentence imposed and a detailed explanation of the conviction. All felony convictions will remain permanently on the Licensee Information Page.

Misdemeanors

All misdemeanor convictions, other than minor traffic violations, must be reported to the Board within sixty days of the date of conviction.² "Minor traffic offenses" does not include driving while intoxicated, driving under the influence, careless or reckless driving, or any other offense involving serious injury or death. Licensees must disclose the date of conviction, the nature of the conviction, the jurisdiction in which the conviction occurred, the sentence imposed and a detailed explanation of the conviction.

Certain misdemeanor convictions will appear on the Licensee Information Page for ten years from the date of conviction. Specifically, the Board will post those involving offenses against a person, offenses of moral turpitude, offenses involving the use of drugs or alcohol and violations of public health and safety codes.³

Medical Board legal staff reviews each conviction to determine whether the Board is required to publish the conviction on the Licensee Information Page. If the licensee believes the conviction does not meet the criteria for posting, the licensee may lodge a formal written appeal. The chair of the Board's Disciplinary Committee will review all such appeals and make a final decision.

Felonies vs. Misdemeanors: A Distinction with a Difference

It is essential to be aware of the legal distinction between felonies and misdemeanors and to report the conviction in the appropriate category. A felony will remain on the licensee's Licensee

Information Page permanently; misdemeanors falling into the categories listed above will appear on the Licensee Information Page for ten years. A licensee charged with a felony but subsequently convicted of a misdemeanor should report this as a misdemeanor conviction, not a felony conviction. If the licensee is unsure of what category the conviction falls into, it is the licensee's responsibility to find out. If a licensee is uncertain and reports a conviction in both categories "to be safe," it will appear to the general public that the licensee has been convicted of both a felony and misdemeanor. Licensees are urged to contact their criminal attorney or the court entering the conviction for assistance.

Appeals

Pending appeals of a criminal conviction will not affect the requirement to report the conviction within the 60-day deadline; however, licensees may note in their brief description of the charges that the matter is under appeal. If the conviction is overturned, the licensee should contact the Licensee Information Coordinator at li@ncmedboard.org to request that the conviction be removed.

Expungements/Expunctions

If a felony or misdemeanor conviction has been expunged, the licensee is not obligated to report the conviction. A note of caution, however, is in order. An unsubstantiated claim of "I thought it was expunged" will not immunize a licensee against an investigation and possible disciplinary action for failing to disclose a conviction not expunged to the Board. Licensees are urged to maintain readily accessible documentation substantiating expunction.

Arrests

In addition to the convictions discussed above, licensees are required to report the following arrests within thirty days: any felony arrest or indictment, any arrest for driving while impaired or driving under the influence and any arrest or indictment for the possession, use or sale of any controlled substance. ⁴ While the fact of an arrest will not publicly appear on the Licensee Information Page, the licensee may utilize the Licensee Information Page portal to meet this reporting obligation.

Actions

Licensees must update their Licensee Information Page within 60 days to report any final public disciplinary order or action by any regulatory board or agency.⁵ For example, actions by other state medical boards, the United States Food and Drug Administration, the United States Drug Enforcement Administration, Medicare and the North Carolina Medicaid program must be reported.⁶ Licensees must provide the date of the action, the regulatory authority taking the action, the discipline imposed and the nature of the action. Licensees are not required to report North Carolina Medical Board disciplinary actions.

All public actions by state medical or osteopathic boards will remain on the website indefinitely. Actions by other agencies will remain on the website for seven years.

Malpractice

Licensees must report to the Board certain medical malpractice judgments, awards, payments or settlements affecting or involving the physician or PA within sixty days.⁷ Specifically, the licensee must report any judgments or award awards during the past seven years regardless of the amount.⁸ In addition, the licensee must report any payments or settlements of \$75,000 or more during the past seven years where the settlement or payment occurred on or after May 1, 2008.⁹

The licensee must provide the following information: the patient's name; claim description; the date of the incident; the medical liability insurer's name and the amount of the judgment, award, payment or settlement. A pending appeal does not impact the licensee's 60-day deadline to update.¹⁰

The Board will publish all judgments and awards for seven years regardless of the amount.¹¹ The Board will publish all payments or settlements of \$75,000 or more related to an incident of alleged medical malpractice affecting or involving the physician or PA where the settlement occurred on or after May 1, 2008.¹² The information will remain on the website for seven years from the date of judgment or award.¹³

The timing, sequence and structure of the amount paid do not affect the reporting or publication requirements.¹⁴ For example, an agreement made on April 1 to pay three separate installments of \$25,000 on October 1, November 1, and December 1 would meet the \$75,000 reporting threshold and must be reported to the Board within sixty days of April 1. Likewise, the attribution of proceeds among multiple plaintiffs/claimants does not affect the reporting or publication requirements. For example, an agreement to pay a husband \$74,999 and his wife \$1 to resolve claims for husband's injuries arising out of allegations of malpractice meet the \$75,000 reporting threshold and must be reported within sixty days. Similarly, attribution of the proceeds based on separate legal theories of recovery does not affect the reporting or publication requirements. For example, a promise to pay \$74,999 to resolve a malpractice allegation and \$1 to resolve an allegation of negligent supervision of a P.A. meet the \$75,000 reporting threshold and must be reported.

The North Carolina Medical Board is one of a small minority of boards that permit licensees to publish a statement explaining the circumstances that led to the judgment, award, payment or settlement. The statement must conform to the ethics of the medical profession, may not reveal the amount of the judgment, award, payment or settlement and may not reveal the patient's identity. The licensee may also specify whether the matter is under appeal.¹⁵

The Board recognizes the inherent complexity in properly reporting malpractice activities. Licensees and their legal counsel are encouraged to communicate with the licensee's professional liability insurance carrier when reporting.¹⁶ Board staff is available by telephone or via email (li@ncmedboard.org) to provide guidance.

Privileges Suspended/Revoked

Pursuant to N.C.G.S. §90-5.2(a) (8), licensees must update the Licensee Information Page within 60 days of any final action by a hospital or other provider organization that issues credentials to physicians or PAs that results in a suspension or revocation of privileges.¹⁷

Changes in clinical privileges need not be updated until all internal appeals within the institution or facility are complete. Such actions will remain on the Licensee Information Page for seven years from the date of the action.

Penalties for Failure to Report

Failure to report the above information as required by the Board's laws and rules or knowingly providing false information may constitute unprofessional conduct and may subject the licensee to disciplinary action. The Board urges all physicians and physician assistants to update their Licensee Information Page in a timely fashion. To update your Licensee Information Page visit www.ncmedboard.org and click on "Update Licensee Info" in the green "Quick Links" box.

Conclusion

The Licensee Information Pages provides useful, credible information to patients to assist them in their health care decision making. Only a small percentage of North Carolina MDs, DOs and PAs will have adverse information reported on the site. The purpose of this article is to help licensees correctly report adverse information and understand which information will be made publicly available on the Licensee Information Page. Board staff remains ready and willing to assist licensees with any and all questions on these matters.

¹ N.C.G.S. §90-5.2 (2007), N.C.G.S. §90-5.2 (2007), 21 N.C.A.C. 32X .0101- 21 N.C.A.C. 32X .0105 (eff. Aug. 11, 2009)

² 21 NCAC 32X .0101

³ 21 NCAC 32X .0104

⁴ N.C.G.S. §90-16(j)

⁵ 21 NCAC 32X .0101; N.C.G.S. §90-5.2(a)(9)

⁶ These are merely examples and are not exhaustive. Please contact Board staff with questions concerning the requirement to report other board or agency actions.

⁷ 21 N.C.A.C. 32X .0101; N.C.G.S. §90-5.3

⁸ N.C.G.S. §90-5.3(a)(1)

⁹ N.C.G.S. §90-5.3(a)(2)

¹⁰ A pending appeal, however, may be noted in the licensee's statement explaining the circumstances that led to the judgment, award, payment or settlement pursuant to N.C.G.S. §90-5.3(c).

¹¹ N.C.G.S. §90-5.3(a)(1)

¹² N.C.G.S. §90-5.3(a)(2)

¹³ N.C.G.S. §90-5.3(c)

¹⁴ N.C.G.S. §90-5.3(a)(3)

¹⁵ N.C.G.S. §90-5.3(c)

¹⁶ The professional liability insurance carrier has an independent obligation to report malpractice actions to the Board pursuant to N.C.G.S. §90-14.13(c).

¹⁷ See N.C.G.S. §90-14.13(a) for a complete description of provider organizations.