



DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Resources and Services Administration

Bureau of Health Professions

Rockville, MD 20857

OCT 05 2011

Mr. John A. Breviu
Leonard, Street and Deinard
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402

Dear Mr. Breviu:

This letter is in response to your letter dated July 13, 2011, regarding an unauthorized query submitted to the National Practitioner Data Bank (NPDB) on March 31, 2011 by [REDACTED] on your client, [REDACTED].

Based on the information you provided, we sent a letter to the hospital Administrator and the Physician Recruitment Coordinator of [REDACTED] to remind them of the NPDB confidentiality requirements and the sanctions for violations of confidentiality. [REDACTED] was notified that they may only submit queries when screening applicants for a medical staff appointment or granting affiliation, clinical privileges, or in support of professional review activity. We take these matters very seriously and will follow up with [REDACTED] to ensure their future compliance.

Thank you for calling this matter to our attention.

Sincerely,

Cynthia Grubbs, R.N., J.D.

Director

Division of Practitioner Data Banks



OCT 05 2011

Dear [REDACTED]

This letter is in response to the communications you had with the National Practitioner Data Bank (NPDB) Call Center staff on August 19, 2011, regarding the unauthorized query on [REDACTED] submitted by [REDACTED], on March 31, 2011. Information reported to the NPDB is confidential and is not to be disclosed outside of the U.S. Department of Health and Human Services except in furtherance of professional review activities. Individuals who violate the confidentiality provisions governing the NPDB could be subject to a civil monetary penalty.

We understand from your conversation with the Call Center staff that you were concerned about the employment status of [REDACTED] at a local hospital, [REDACTED]. [REDACTED] is an independent entity and not associated with [REDACTED]. [REDACTED] may only submit queries on practitioners with whom they are affiliated and [REDACTED] was not affiliated, nor was he seeking affiliation with [REDACTED] at the time of the query.

More specifically, the regulations governing the NPDB (45 CFR §60.13), state:

(a) *Who may request information and what information may be available.* Information in the NPDB will be available, upon request, to the persons or entities, or their authorized agents, as described below:

(1) Information reported under §§60.7, 60.8, and 60.11 is available to:

(i) A hospital that requests information concerning a physician, dentist or other health care practitioner who is on its medical staff (courtesy or otherwise) or has clinical privileges at the hospital;...

... (iv) A health care entity which has entered or may be entering into an employment or affiliation relationship with a physician, dentist, or other health care practitioner, or to

which the physician, dentist, or other health care practitioner has applied for clinical privileges or appointment to the medical staff;...

...vi) A health care entity with respect to professional review activity; and...

...(2) Information reported under §§60.9 and 60.10 is available to the agencies, authorities, and officials listed below that request information on licensure disciplinary actions and any other negative actions or findings concerning an individual health care practitioner, physician, dentist, or entity. These agencies, authorities, and officials may obtain data for the purposes of determining the fitness of individuals to provide health care services, protecting the health and safety of individuals receiving health care through programs administered by the requesting agency, and protecting the fiscal integrity of these programs...

(vii) Hospitals and other health care entities (as defined in section 431 of the HCQIA), with respect to physicians or other licensed health care practitioners who have entered (or may be entering) into employment or affiliation relationships with, or have applied for clinical privileges or appointments to the medical staff of, such hospitals or other health care entities;

In summary, health care entities may query when screening applicants for a medical staff appointment or granting affiliation, clinical privileges, and in support of professional review activity only.

The NPDB regulations (45 CFR §60.3) define a professional review activity as “an action of a health care entity with respect to an individual physician, dentist, or other health care practitioner: (1) to determine whether the physician, dentist, or other health care practitioner may have clinical privileges with respect to, or membership in, the entity; (2) to determine the scope or conditions of such privileges or membership; or (3) to change or modify such privileges or membership.” As ████████ did not have, nor seek to have, an affiliation with your organization, the query submitted by ████████ was clearly not for the purpose of professional review.

The information contained in the NPDB is considered confidential and cannot be disclosed except as specified in the Data Bank regulations. The NPDB confidentiality provision (45 CFR §60.15) states:

(a) *Limitations on disclosure.* Information reported to the NPDB is considered confidential and shall not be disclosed outside the Department of Health and Human Services, except as specified in §§60.12, 60.13, and 60.16. Persons who, and entities which, receive information from the NPDB either directly or from another party must use it solely with respect to the purpose for which it was provided. Nothing in this paragraph shall prevent the disclosure of information by a party which is authorized under applicable State law to make such disclosure.

(b) *Penalty for violations.* Any person who violates paragraph (a) shall be subject to a civil money penalty of up to \$11,000 for each violation. This penalty will be imposed pursuant to procedures at 42 CFR part 1003.

The NPDB regulations and Guidebook that detail our policies are available on our website at: www.npdb-hipdb.hrsa.gov for your reference.

Please provide written confirmation within 30 days of the date of this letter that [REDACTED] and its authorized Data Bank users understand, and will abide by, the policies described in the NPDB regulations, and will cease and desist from any future unauthorized queries. Failure to provide written documentation will result in the deactivation of your Data Bank account or further action. Documentation should be mailed to:

ATTN: Cynthia Grubbs
U.S. Department of Health and Human Services
Health Resources and Services Administration
Bureau of Health Professions, Division of Practitioner Data Banks
5600 Fishers Lane, Room 8-103
Rockville, MD 20857

If you have questions regarding this matter, please feel free to contact me directly.

Sincerely,



Cynthia Grubbs, R.N., J.D.

Director

Division of Practitioner Data Banks

cc:

cc:



Bureau of Health Professions

OCT 04 2011

Dear [REDACTED]

Thank you for contacting Secretary Sebelius. Your letter was referred to the Health Resources and Services Administration, Bureau of Health Professions for a response. You stated that two of your organizations, which are part of [REDACTED], submitted National Practitioner Data Bank (NPDB) reports. Further you explain that these reports were subsequently posted on [REDACTED] Website. You wanted our assistance in investigating the matter.

SRA, the contractor for the Data Bank, contacted [REDACTED] and explained the NPDB confidentiality provisions. The NPDB reports were removed from [REDACTED] Web site.

You are correct that the statutes and regulations governing the NPDB do not allow disclosure of NPDB reports to the general public. Violators of this confidentiality may have civil money penalties imposed upon them by the Office of Inspector General (OIG), HHS. For each violation of confidentiality, a civil money penalty of up to \$11,000 can be levied. Persons or entities who receive information from the NPDB either directly or indirectly are subject to the confidentiality provisions and the imposition of a civil money penalty if they violate those provisions.

If you have any further questions or need more assistance, please contact Donald Illich at dillich@hrsa.gov. Thank you for writing.

Sincerely,

Janet Heinrich, Dr.P.H., RN
Associate Administrator

[REDACTED]

TO: Kathleen Sebelius
Secretary Health and Human Services

FROM: [REDACTED]

Data Bank ID Number: [REDACTED]

DATE: September 13, 2011

RE: NPDB Reports posted on [REDACTED] Website

On May 2, 2011 and July 5, 2011 [REDACTED] completed NPDB reports regarding the suspension of privileges and revocation of privileges of [REDACTED]. On these same dates a copy of the individual NPDB report was sent via certified mail to the attention of [REDACTED] as required.

On July 25, 2011 the [REDACTED] office filed a petition for summary suspension of [REDACTED] medical license. Identified within the petition are exhibits A and C which are the NPDB reports filed by [REDACTED]. Exhibit B is a NPDB report filed by another facility with in our system [REDACTED] regarding the suspension of his privileges at that facility.

Last Friday our media department was contacted by a local news station to comment on the NPDB reports that were filed along with other information surrounding this practitioner's loss of privileges. Today we discovered that the AG's Petition for Summary Suspension along with the NPDB exhibits referenced above were placed on the Professional Licensing Agency's public web site for license litigation on or soon after July 25th. The documents can be found at the following link, I have also attached them to this memo:

[REDACTED]

It is felt that the posting of the NPDB reports on a website accessible by the general public violates Federal Law - Title IV of Public Law 99-960 as amended; Section 1921 of the Social Security Act; and 45 CFR Part 60.

While we have contacted the [REDACTED] Attorney General's office and [REDACTED], we have yet to receive the rationale for posting these confidential documents on a public web site, nor have they assisted in removing the NPDB reports from their web site.

Your assistance in investigating this matter is appreciated.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Feb. 26. 2010 3:17PM



February 24, 2010

Kristen
National Practitioner Data Bank (NPDB)
P.O. 10832
Chantilly, VA 20153-0832

RE: "Request for Clarification" of suspected unethical & fraudulent abuse of
the Data Bank's integrity.

Dear Kristen,

Enjoyed speaking with you today and enclosed are the documents requested. I initially filled out and signed the "[REDACTED] Standardized Credentialing Application" on 7/15/08, yet [REDACTED] rejected that application and thus my authorization to query the Data Bank because she objected to the format. I made a special trip to her hospital (100 mile round trip) and visited her on 7/29/08 to get her instructions on an application format that was acceptable (see enclosed letter).

On August 7, 2008 I completely redid the application and mailed it to her office. She accepted this application and at that time was authorized to query the NPDB.

My personal Data Bank query was months later on May 4, 2009.

Sincerely,

[REDACTED]

SCANNED

MAR - 1 2010

[REDACTED]

July 29, 2008

[REDACTED]

Dear [REDACTED]

I am so glad I have finally gotten to meet you personally, today. I realize by the length of time it has taken me to do so that you are very busy and have a lot of responsibility there at the hospital. I am sorry if I caused any discomfort for [REDACTED] when I was visiting at the nurse's station with him. It seemed to upset you unduly and for that I am very sorry.

Thank you for your help in assisting with the completion of my staff application. As you directed, I will have my staff pull the updated version of the standardized application from the internet. If we have any trouble doing that, could you have one of your staff assist me on how to get the updated form when we call and if I am still not able to pull one up on the internet, perhaps you all can send me one.

Sincerely,

[REDACTED]

[REDACTED]

Section III - Standard Authorization, Attestation and Release - continued

party for their acts, defamation or any other claims based on statements made in good faith and without malice or misconduct of such Entity, Agent(s) or third party in connection with the credentialing process. This release shall be in addition to, and in no way shall limit, any other applicable immunities provided by law for peer review and credentialing activities.

In this Authorization, Attestation and Release, all references to the Entity, its Agent(s), and/or other third party include their respective employees, directors, officers, advisors, counsel, and agents. The Entity or any of its affiliates or agents retains the right to allow access to the application information for purposes of a credentialing audit to customers and/or their auditors to the extent required in connection with an audit of the credentialing processes and provided that the customer and/or their auditor executes an appropriate confidentiality agreement. I understand and agree that this Authorization, Attestation and Release is irrevocable for any period during which I am an applicant for Participation at an Entity, a member of an Entity's medical or health care staff, or a participating provider of an Entity. I agree to execute another form of consent if law or regulation limits the application of this irrevocable authorization. I understand that my failure to promptly provide another consent may be grounds for termination or discipline by the Entity in accordance with the applicable bylaws, rules, and regulations, and requirements of the Entity, or grounds for my termination of Participation at or with the Entity. I agree that information obtained in accordance with the provisions of this Authorization, Attestation and Release is not and will not be a violation of my privacy.

I certify that all information provided by me in my application is true, correct, and complete to the best of my knowledge and belief, and that I will notify the Entity and/or its Agent(s) within 10 days of any material changes to the information I have provided in my application or authorized to be released pursuant to the credentialing process. I understand that corrections to the application are permitted at any time prior to a determination of Participation by the Entity, and must be submitted on-line or in writing, and must be dated and signed by me (may be a written or an electronic signature). I understand and agree that any material misstatement or omission in the application may constitute grounds for withdrawal of the application from consideration; denial or revocation of Participation; and/or immediate suspension or termination of Participation. This action may be disclosed to the Entity and/or its Agent(s).

I further acknowledge that I have read and understand the foregoing Authorization, Attestation and Release. I understand and agree that a facsimile or photocopy of this Authorization, Attestation and Release shall be as effective as the original.

SIGNATURE _____

NAME (PLEASE PRINT OR TYPE) _____

Last 4 digits of SSN or NPI (PLEASE PRINT OR TYPE) _____

DATE (MM/DD/YYYY) 7/15/2008

Required Attachments or Supplemental Information - Please attach hard copy or scanned documents of the following:

- ☒ Copy of DEA or state DPS Controlled Substances Registration Certificate
- ☐ Copy of other Controlled Dangerous Substances Registration Certificate(s)
- ☒ Copy of current professional liability insurance policy face sheet, showing expiration dates, limits and applicant's name
- ☒ Copies of IRS W-9s for verification of each tax identification number used
- ☐ Copy of workers compensation certificate of coverage, if applicable
- ☒ Copy of CLIA certifications, if applicable
- ☐ Copies of radiology certifications, if applicable
- ☐ Copy of DD214, record of military service, if applicable

Reproduction of this form without any changes is allowed.

Notice About Certain Information Laws and Practices Pertaining to State Governmental Bodies (I.e. State Hospitals)
 With few exceptions, you are entitled to be informed about the information that a state governmental body collects about you (I.e. a state hospital). Under sections _____ of the _____, you have a right to review or receive copies of information about yourself, including private information. However the state governmental body may withhold information for reasons other than to protect your right to privacy. Under section _____ of the _____, you are entitled to request that the state governmental body correct information that it has about you that is incorrect. For information about the procedure and costs for obtaining information, please contact the appropriate state governmental body to which you have submitted this application.

U.S. Postal Service™ Delivery Confirmation™ Receipt

Postage and Delivery Confirmation fees must be paid before mailing.
Article must be (to be completed by sender)

Please Print Clearly

DELIVERY CONFIRMATION NUMBER

POSTAL CUSTOMER:

Keep this receipt. For inquiries,
visit the Internet web site at
usps.com
or call 800-222-1811

USE (POSTAL USE ONLY)

☐ Priority Mail™ Service

☐ First-Class Mail® parcel

☐ Package Services parcel

National Practitioner Data Bank
Healthcare Integrity and Protection Data Bank
Box 10832
Rockville, VA 20783-0832

<http://www.npdb-hipdb.hrsa.gov>

DCN: [REDACTED]
Process Date: 05/04/2009
Page: 1 of 1

To: [REDACTED]
[REDACTED]
[REDACTED]

From: National Practitioner Data Bank / Healthcare Integrity and Protection Data Bank
Re: Response to Your Self-Query

The enclosed information is released by the National Practitioner Data Bank (NPDB) for restricted use under the provisions of Title IV of Public Law 99-660, the Health Care Quality Improvement Act of 1986, as amended, and the Healthcare Integrity and Protection Data Bank (HIPDB) for restricted use under the provisions of Section 1128E of the Social Security Act.

The NPDB was established as an information clearinghouse to collect and release certain information related to malpractice payment history and professional competence or conduct of physicians, dentists, and other licensed health care practitioners. Regulations governing the NPDB are codified at 45 CFR part 60. Responsibility for operating the NPDB resides with the Secretary of the U.S. Department of Health and Human Services (HHS), HRSA, Division of Practitioner Data Banks.

Section 1128E was established by Section 221(a) of Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996, as amended. The statute established the HIPDB to combat fraud and abuse in health insurance and health care delivery and to improve the quality of patient care. The HIPDB serves as a source of final adverse action information on health care practitioners, providers, and suppliers. The HIPDB collects and releases information related to adverse licensure actions; health care-related convictions and judgments; exclusions from Federal and State health care programs; and other adjudicated actions or decisions. Regulations governing the HIPDB are codified at 45 CFR Part 61. Responsibility for operating the HIPDB resides with the Secretary of the U.S. Department of Health and Human Services (HHS), Office of Inspector General, and HRSA, Division of Practitioner Data Banks.

Reports from the NPDB and HIPDB contain limited summary information and should be used in conjunction with information from other sources in granting clinical privileges or making employment affiliation, contracting, or licensure decisions. The NPDB and HIPDB response may contain more than one report on a particular incident, if two or more actions were taken as a result of a single incident (e.g., an adverse licensure action and an exclusion from the Medicare and Medicaid programs). The NPDB and HIPDB is a flagging system and a report may be included for a variety of reasons that do not necessarily reflect adversely on the professional competence or conduct of the subject named in the report.

All information received from the NPDB and HIPDB is considered confidential and must be used solely for the purpose for which it was disclosed. ANY PERSON WHO VIOLATES THE CONFIDENTIALITY PROVISIONS AS SPECIFIED IN TITLE IV OF PUBLIC LAW 99-660, AS AMENDED, IS SUBJECT TO A CIVIL MONEY PENALTY OF UP TO \$11,000 FOR EACH VIOLATION. Subjects of reports who obtain information about themselves from the NPDB and/or HIPDB are permitted to share that information with anyone they choose.

If you require additional assistance, visit the NPDB-HIPDB web site (<http://www.npdb-hipdb.hrsa.gov>) or contact the NPDB-HIPDB Customer Service Center at 1-800-767-6732 (TDD: 1-703-802-9395). Information Specialists are available to speak with you weekdays from 8:30 a.m. to 6:00 p.m. (5:30 p.m. on Fridays) Eastern Time. The NPDB-HIPDB Customer Service Center is closed on all Federal holidays.

NPDB-HIPDB
The NPDB and HIPDB
are Federal Government
of Health and Human
Services

CONFIDENTIAL DOCUMENT - FOR AUTHORIZED USE ONLY

Fax

To: Krsten Date: 2/26/10
Fax #: _____ Phone: _____
Pages: _____ From: _____
Re: _____ CC: _____

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• Comments _____

The data you requested

If you do not receive a complete fax, please contact our office at _____.

CONFIDENTIALITY STATEMENT

The information contained in this facsimile message is legally privileged and confidential information which is intended only for the use of the individual or entity named above. If you have received this message in error, please immediately notify us by telephone and return the original message to us at the address listed above via US Postal Service.

National Practitioner Data Bank
Healthcare Integrity and Protection Data Bank
P.O. Box 10832
Chantilly, VA 20153-0832

<http://www.npdb-hipdb.hrsa.gov>

DCN: [REDACTED]
Process Date: 06/26/2008
For authorized use by: [REDACTED]

NPDB CHARGE RECEIPT

(THIS IS NOT A BILL - MAY NOT REFLECT FINAL
PAYMENT)

A. ENTITY INFORMATION

Data Bank Identification Number
(DBID): [REDACTED]

Entity Name: [REDACTED]

Address: [REDACTED]

City, State, ZIP: [REDACTED]

Payment Method: VISA

Account Number: [REDACTED]

Expiration Date: [REDACTED]

Cardholder's Name: [REDACTED]

Cardholder's Billing Address: [REDACTED]

City, State, ZIP: [REDACTED]

Transaction Date: 06/26/2008

Transaction Number: [REDACTED]

B. CHARGES

Date Charged: 06/26/2008

Reference Number: N18071173

Number of Subjects in Query: 1

Fee per Subject: \$4.75

TOTAL NPDB CHARGE: \$4.75

C. SEARCH RESULTS

| Subject Name | Results | Fee |
|--------------|---------|-----|
|--------------|---------|-----|

 SUCCESSFUL

\$4.75

Total Charge:**\$4.75**

CONFIDENTIAL DOCUMENT - FOR AUTHORIZED USE ONLY



PRIVILEGED AND CONFIDENTIAL—RECORDS AND PROCEEDINGS OF MEDICAL
PEER REVIEW COMMITTEE

TIMELINE FOR CREDENTIALING [REDACTED]

| DATE | OCCURRENCE |
|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6/24/08 | [REDACTED] came to Medical Staff office and spoke with [REDACTED] stating he wanted to come here. When introducing himself, [REDACTED] commented that she knew him and he seemed surprised. She reminded him he had made application several years ago. He then said yes, "they just sent applications out all over but he didn't have time then to come over here so he never actually came". He was brought to [REDACTED] by [REDACTED] stated he had spoken with [REDACTED] and [REDACTED] and they really wanted him to come here. |
| 6/26/08 | Query to National Practitioner Data Bank. |
| Between 7/15/08 and 7/24/08 | Original application received from [REDACTED] on outdated 2002 form (release dated 7/15/08 and AMA query done on 7/24/08 using information from application so application received between those dates) |
| 7/29/08 | [REDACTED] visited Medical Staff Office and conversation with [REDACTED] with [REDACTED] as witness wherein [REDACTED] told by [REDACTED] that application was on old state form and he would need to obtain current form from website and submit it. Also told that he would have to provide response to letter of 11/15/1999 when he had also made application to staff before new application would be processed. Copy of 11/15/99 letter provided to [REDACTED]. |
| 7/31/08 | Current application received by fax but unable to read sections of form. Dr's office notified by phone that fax not readable and needed to mail application form. |
| 8/6/08 | Current application received by mail with note from [REDACTED] in Dr's office. Application reviewed and incomplete pages identified. [REDACTED] at Dr's office notified that Attachments E and G not completed. |
| 8/15/08 | Completed Attachments E and G received by mail. Attachment G (malpractice claims) showed "policy limits" for amount paid on two suits. |
| 8/15/08 | Dr's office notified by phone that actual monetary amounts paid would need to be listed. |
| 8/15/08 | Attachment G with actual monetary amounts listed sent by fax on 8/15/08. |
| 11/26/08 | Received response letter by fax dated 11/25/08 for letter of inquiry of 11/15/99 from [REDACTED] with notation that it is for the 8/7/08 application. This is response that [REDACTED] was told on 7/29/08 would have to be made before processing would begin on his application. |
| 12/18/08 | Certified letter to [REDACTED] from [REDACTED] regarding questions from application with deadline for response of 1/5/09 given. Certified letter signed for by [REDACTED] in Dr's office on 12/24/08. |
| 12/19/08 | Letters to hospitals and references sent. |
| 1/20/09 | Letter from [REDACTED] dated 1/19/09 in response to letter of 12/18/08. Letter was 15 days past deadline. |
| 3/3/09 | Letter to [REDACTED] from [REDACTED] notifying [REDACTED] of status of information requested and that application is still incomplete and requesting his assistance in obtaining needed information. Deadline of 4/6/09 given for application to be considered at 4/7/09 Credentials Committee meeting. |

| | |
|---------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3/4/09 | Second requests sent to hospitals that have not answered or answers are incomplete. |
| 3/17/09 | Letter dated 3/13/09 received from [REDACTED] in response to 3/3/09 letter from [REDACTED] |
| 4/2/09 | Third requests sent to hospitals that have not answered or answers are incomplete |
| 4/2/09 | Letter to [REDACTED] from [REDACTED] updating him on status of application and information received to this date and again giving deadline of 4/6/09 to be considered at 4/7/09 Credentials Committee meeting. |
| 4/3/09 | Letter from [REDACTED] in response to letter of 4/2/09 . |
| 4/9/09 | Letter to [REDACTED] from [REDACTED] notifying him his application is still incomplete and cannot be processed and listing information still not complete. Also listed other questions for him regarding his application and requested he review all information provided at time application submitted and update any not current. Requested a written explanation of why he did not list the licenses he holds or has held in nine states rather than just the three he listed. Also notified him his application is still pending for an additional 30 days until 5/11/09 at 9:00 am after which the application will be withdrawn from further processing if all information not received. |
| 4/27/09 | Letter from [REDACTED] dated 4/23/09 received in response to the 4/9/09 letter. This letter of [REDACTED] states the requests have been inappropriate or that [REDACTED] is purely misrepresenting facts to the committee. |
| 4/29/09 | Letter to [REDACTED] from [REDACTED] in response to [REDACTED] letter of 4/23/09 to [REDACTED]. Again stated what information is still lacking. Reminded him again to review application and provide any updates necessary. Also noted that any material omission is grounds for withdrawal or denial of application. Also cautioned him against making allegations against staff unless he has evidence to support the allegations. Reminded him again of deadline for application going to committee. |



Bureau of Health Professions

Rockville, MD 20857

SEP 3 2010

[REDACTED]

Dear [REDACTED]:

Thank you for your letter requesting clarification of "suspected unethical and fraudulent abuse of the Data Bank's integrity." Your letter was referred to the Health Resources and Services Administration, Bureau of Health Professions for a response. We apologize for the delay in our response. You believe that [REDACTED] was not authorized to query the National Practitioner Data Bank (NPDB) on June 26, 2008 regarding your professional records. You allege they acted incorrectly in querying the NPDB prior to receiving the appropriate papers permitting the query.

Both you and the hospital were asked to provide certain information to the Data Banks to determine if the hospital had overstepped its bounds by performing an NPDB query that resulted in a violation of confidentiality of NPDB information. We are grateful for your thorough reply in supplying the data we requested.

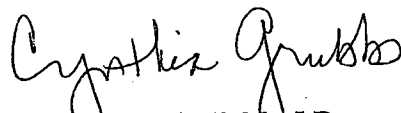
We take matters pertaining to the confidentiality of the Data Banks' contents seriously and we appreciate your following up on this matter. Raising this potential breach of confidentiality almost 2 years later and one year after your notice by self-query, does not necessarily warrant further investigation. However, we did review all of the documentation sent by you and the hospital. According to the timeline submitted by you and the hospital, you expressed a verbal interest in applying for a position on staff on June 24, 2008 during your visit to the hospital. We believe the hospital acted in good faith to expedite your application. In your response you did not deny that on June 24, 2008 you expressed your interest in joining the staff. Also, the information the hospital received on June 26, 2008, is the same information the hospital would have received on July 29, 2008 or August 7, 2008.

Other factors, such as outdated State forms may have caused delays in the processing of your application, but the fact that you expressed interest in joining the staff appears to be undisputed. The hospital timeline states your application was never completed after multiple requests for information; therefore the query results were irrelevant in decision-making.

received
9/8/2010

Thank you for your interest in maintaining the integrity of the Data Banks. We appreciate your sharing your concerns with us. Your communication helps to inform our decisions as we promote patient safety and quality in the delivery of health care services.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cynthia Grubbs".

Cynthia Grubbs R.N., J.D.

Director

Division of Practitioner Data Banks

[REDACTED]

October 8, 2010

Cynthia Grubbs, RN, JD
Division of Practitioner Data Banks – Director
Bureau of Health Professions
Department of Health & Human Services
Rockville, MD 20857

RE: Suspected unethical & fraudulent abuse of Data Bank's integrity by [REDACTED]

Dear Ms. Grubbs,

I am still perplexed as why your response last month to my 2/19/2010 "request for clarification" was so late in coming. You seem to have been put off by the fact that my response was almost 2 years from my initial query. I am fearful that you have me confused with someone else because my letter to you was in a timely manner several months after my self-query in May 2009. I do not understand that first of all, it took the hospital staff several months after their unauthorized query to even notify me that they had contacted the Data Bank. After learning of their query, I contacted the Data Bank and learned that their query had been without my consent. So the time frame does not seem to be anything out of the ordinary, particularly since most of what we are discussing are reports that were made to the Data Bank 20 years ago.

A verbal request for information concerning membership on a medical staff does not constitute a formal application as you well know & in fact as I recall the [REDACTED] policy would not honor a verbal request, but mandated that I formally request application materials in writing. At that point in time in June 2008 during my initial visit, I did not receive the medical staff application and as a matter of fact the satisfactorily completed application was not accepted by the [REDACTED] until 2 months later in August 2008. So your response does not even square with the information that I have given you.

To reiterate at the time of my initial inquiry in June 2008, the [REDACTED] did not provide me with a medical staff application form, but told me that if I had any interest to get the form off the internet and that is where the form that was out-of-date came from. So the hospital was so lacking in diligence that they could not even provide a perspective physician the forms they required. Certainly the [REDACTED] had set a standard that staff membership mandated a signed application by the physician before they would begin the application process thus obligating them to abide by the same standard of obtaining signed authorization from the physician before querying the Data Bank.

With all the interaction between [REDACTED] and myself over the prerequisite form, I did not receive the correct form until August 2008 and that was the first time I was actually able to submit the application form they require with my signature and authorization for them to submit a query to the Data Bank regarding my status. In the meantime, [REDACTED] (nurse [REDACTED]) had already

made an unauthorized query without my knowledge. Without my being able to respond to entries in the Data Bank, it is my feeling that their unauthorized query of the Data Bank before receiving my application prejudiced them and caused them to drag their feet even further when they finally did receive the correct form. Therefore your assertion "the query results were irrelevant in the decision making" is inaccurate and contradictory to the stated mission of the Data Bank.

In the meantime, to my advantage the [REDACTED] went into receiver ship which would adversely impact the hospital's customers health insurance coverage and limit my ability to provide board certified subspecialty care at their hospital. This in conjunction with the bad faith actions of nurse [REDACTED] evidenced by the hospital's unethical and fraudulent abuse of the Data Bank's integrity resulted in my decision not to pursue a staff position at that hospital.

I am still perplexed at the nature of your response letter and as I already said – the lateness of it. You are speaking about the lateness of my response, please explain yours. I think as a result of this, you need to refer this letter to the next level above your office so that they can explain why this was so late a response to my initial letter and why you seem to take the position of supporting the hospital when they obviously spoke out of turn without having a completed application to their satisfaction.

The hospital's assertion that the "application was never completed after multiple requests for information" may indicate another breach of integrity and deception against your department. It is my recollection that the hospital indeed requested responses from all past institutions whether by letter or telephone because at the hospitals request my office had personally talked to all institutions via telephone. These institutions affirmed their desire to comply with [REDACTED] request for information. But at those institutions dating to 20-30 years before, I was informed that they were obligated to retain physician records for only 5-7 years as mandated by the law, therefore I feel comfortable that nurse [REDACTED] had all the information available from those institutions at her disposal even if the response was that no data had been retained after 7 years.

Sincerely,

[REDACTED]



Bureau of Health Professions

Rockville, Maryland 20857

OCT 26 2010

Dear [REDACTED]

Please accept my apologies for the lateness of the response to your initial inquiry on February 19, 2010. This delay was due in part to a change in leadership and restructuring at the Data Banks. I want to also assure you that we have not confused your case with another. As stated in our September 3, 2010 letter to you we take matters pertaining to the confidentiality of the Data Banks' contents seriously.

You are correct that a hospital may only query at the time a health care practitioner applies for a position on its medical staff (courtesy or otherwise) or for clinical privileges at the hospital. We do not define what constitutes an application or when an application is initiated. You claim that it is not the hospital's policy to accept a verbal request to seek appointment on the staff. However, you did proceed with a formal signed application a few weeks after expressing your intent to apply. If you had not applied, we would have arrived at a different decision.

We find that the hospital did not use the information requested for any other purpose outside the scope of making an employment decision.

Thank you for your due diligence in writing to help preserve and protect the integrity of the Data Banks.

Sincerely,

Cynthia Grubbs, R.N., J.D.

Director

Division of Practitioner Data Banks



Bureau of Health Professions

May 28, 2010

Rosemary McGovern
Assistant Attorney General
Office of the Attorney General
P.O. Box 120
Hartford, CT 06106

Dear Ms. McGovern:

This is in response to your inquiries regarding the confidentiality provisions of the National Practitioner Data Bank (NPDB) and Healthcare Integrity and Protection Data Bank (HIPDB). Specifically, the disclosure and re-disclosure of NPDB and HIPDB reports pursuant to State law. In short, it is the Health Resources and Services Administration (HRSA) long-standing position, consistent with the statutes and regulations of the NPDB and HIPDB, that while a reporter may disclose information from its own files used to create NPDB and HIPDB reports consistent with state law, the NPDB and HIPDB reports themselves are non-disclosable. A State's freedom of information law does not create an exception to the general rule that NPDB and HIPDB reports are non-disclosable.

The Health Care Quality Improvement Act of 1986 (HCQIA), 42 USC 11101 et seq., the legislation establishing the NPDB, states as follows:

Information reported under this part [to the NPDB] is considered confidential and shall not be disclosed (other than to the physician or practitioner involved) except with respect to professional review activity...or in accordance with the regulations of the Secretary [providing certain entities with access to NPDB information.] Nothing in this subsection shall prevent the disclosure of such information by a party which is otherwise authorized, under applicable State law, to make such disclosure. 42 USC 11137(b)(1).

The regulations implementing the HCQIA, that govern the operation of the NPDB, state as follows:

Information reported to the NPDB is considered confidential and shall not be disclosed outside the Department of Health and Human Services, except as specified in §§ 60.12, 60.13 and 60.16. Persons who, and entities which, receive information from the NPDB either directly or from another party must use it solely with respect to the purpose for which it was provided. Nothing

in this paragraph shall prevent the disclosure of information by a party which is authorized under applicable State law to make such disclosure. 45 CFR 60.15(a).

The HCQIA holds that the confidentiality provisions shall not prevent the disclosure of information by a party authorized under applicable State law to make such disclosure. This provision applies to the information reported to the NPDB, not the information received from the NPDB. This statutory provision was intended to allow a State Licensing Board, which is authorized under a State law to release the information that was reported to the Board, to continue to release the information. See H.R. Rep. No. 99-903, at 20 (1986). For example, the HCQIA was not intended to supersede a State law authorizing the State Medical Board to publicly disclose adverse licensure actions it takes. Likewise, if a State had its own law mandating that medical malpractice payments are reported to the State Medical Board and subsequently disclosed to the public, the HCQIA would not prevent such a disclosure. However, this section of the Act does not give a State discretion to publicly disclose information obtained from the NPDB.

As indicated in the HCQIA and the NPDB regulations, NPDB reports are considered confidential and shall not be disclosed outside HHS except for the purpose for which the information was provided, or as specified within the NPDB regulations. While information received from the NPDB is considered confidential, the confidentiality provisions do not apply to the original documents or records from which the reported information is obtained. As a result, these confidentiality provisions do not bar or restrict the release of the underlying documents or the information itself by the entity taking the adverse action or making the payment in settlement of a medical malpractice claim.

Congress went to great lengths to protect the confidentiality of NPDB information by making it available to only State licensing boards, hospitals, professional societies, and other health care entities. Public access to NPDB information was carefully considered by Congress, but clearly rejected. Therefore, interpreting the language of the law to allow for State disclosure of information obtained from the NPDB to the general public pursuant to a State freedom of information law would clearly be contrary to Congressional intent to limit the disclosure of NPDB information.

The NPDB statute and regulations provide the HHS Office of Inspector General (OIG) the authority to assess a civil money penalty of up to \$11,000 for each violation of the NPDB's confidentiality provisions.

While violations of the HIPDB confidentiality provision are not likewise punishable by a civil monetary penalty, the restrictions placed on the disclosure of reports and the scope of the confidentiality protections is similar. The regulations implementing the HIPDB state:

Information reported to the HIPDB is considered confidential and will not be disclosed outside the Department except as specified in §§61.12 and 61.15.

Persons and entities receiving information from the HIPDB, either directly or from another party, must use it solely with respect to the purpose for which it was provided. Nothing in this section will prevent the disclosure of information by a party from its own files used to create such reports where disclosure is otherwise authorized under applicable State or Federal law. 45 CFR 61.14.

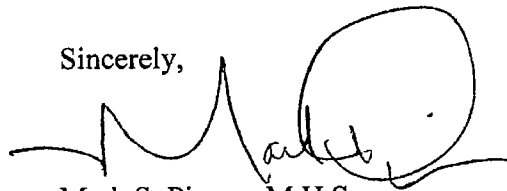
As clearly stated in the HIPDB regulation above, information used by a party to create a report from its own files is disclosable, where authorized by State or Federal law. There is no general exemption for the disclosure of the HIPDB reports themselves (whether created by the reporting entity or obtained from other reporters) based on State law.

The HIPDB Guidebook (http://www.npdb-hipdb.hrsa.gov/pubs/gb/HIPDB_Guidebook.pdf), a publication meant to serve as a resource for the users of the HIPDB, provides further clarification. On page A-3 of the Guidebook it clarifies that individuals who receive information from the HIPDB, either directly or indirectly, are subject to the same confidentiality provisions. Further, in explaining the types of materials that are releasable the Guidebook states:

The confidentiality provisions do not apply to the original documents or records from which the reported information is obtained. The HIPDB's confidentiality provisions do not impose any new confidentiality requirements or restrictions on those documents or records. Thus, these confidentiality provisions do not bar or restrict the release of the underlying documents, or the information itself, by the entity taking the adverse action.

We view any violations of the confidentiality provisions very seriously. Thank you for your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark S. Pincus', with a large, stylized circular flourish at the end.

Mark S. Pincus, M.H.S.
Acting Director
Division of Practitioner Data Banks