

COMMONWEALTH OF MASSACHUSETTS
BOARD OF REGISTRATION IN MEDICINE

DRC Policy 03-01

DATA REPOSITORY COMMITTEE
PROCEDURES FOR REVIEW OF MANDATED REPORTS
(Approved by the DRC on Dec. 3, 2003)

The Data Repository Committee, assisted by Data Repository Unit staff, shall review all reports from mandated reporters of adverse information concerning licensed physicians. Mandated reports include health care facility disciplinary action reports (M.G.L. c. 111, §§ 53B and 203, and 243 CMR 2.07 (17) and 3.13); medical association disciplinary action reports (M.G.L. c. 112, § 5B); positive responses to license renewal questions (M.G.L. c. 112, § 2); court reports of criminal matters (M.G.L. 221, § 26); court reports of medical malpractice (M.G.L. c. 231, §. 60B); government agency reports (M.G.L. c. 112, § 5D); peer reports (M.G.L. c. 112, § 5F); reports by insurers of malpractice claims or actions (M.G.L. c. 112 § 5C; reports of patterns of abuse from the Workers' Compensation health care services board (M.G.L. c. 152 § 13 (3); reports of the dissolution or disassociation of a professional corporation, partnership or practice group (243 C.M.R. 3.11 (5) and ProMutual reports of secondary remedial action (M.G.L. c. 175A, § 5C). Reports shall be reviewed according to the procedures set forth below.

DIRECT REFERRALS

The Data Repository Committee may designate certain types of mandated reports that require immediate referral to either the Board's Enforcement Division or to the Board's Physician Health and Compliance Unit. In addition, the Data Repository Unit staff may seek authorization from the Chair of the Data Repository Committee for immediate referral of a mandated report. The categories of reports that are designated by the Data Repository Committee for direct referral are listed below.

Direct Referral to the Enforcement Division

The Data Repository Unit shall forward the following categories of reports directly to the Board's Enforcement Unit:

- the report alleges physician impairment;
- the report alleges sexual relationship/misconduct with patient (allegations regarding the use of child pornography are to be deemed sexual misconduct.);
- the physician's entire health care facility privileges have been terminated or suspended for reasons related to competence;

- the report relates to out-of-state discipline;
- the physician named in the report is the subject of an open Enforcement Division investigation;
- the report is made under the provisions of MGL c. 175A §5C; or
- the report alleges the physician is an immediate and serious threat to the public health, safety and welfare, such that the Board could initiate an action to summarily suspend the physician's license.

Direct Referral to the Physician Health and Compliance Unit

The Data Repository Unit shall forward the following categories of reports directly to the Board's Physician Health and Compliance Unit:

- all renewal "yes" answers that relate to impairment (alcohol, chemical, organic and/or mental health); and
- all renewal "yes" answers where the physician reports an arrest on OUI/DUI charges.

DATA REPOSITORY COMMITTEE REVIEW OF MANDATED REPORTS

The Data Repository Committee, with the assistance of Data Repository Unit staff, shall review mandated reports that are not referred directly to the Board's Enforcement Division or Physician Health and Compliance Unit. The Data Repository Committee may designate procedures for Data Repository Unit staff evaluation of certain categories of reports without formal presentation of each report to the Committee.

Medical malpractice reports concerning a physician, i.e., closed claim reports and court reports, shall be reviewed when a physician has four or more medical malpractice cases on his or her record, or when the Board receives a report of a plaintiff's verdict against the physician. Any physician whose medical malpractice history has been reviewed by the Data Repository Committee shall be re-reviewed whenever a new medical malpractice report is received within two years of the Committee's most recent review.

Procedures for Presentation of Matters to the Data Repository Committee

When required, Data Repository Unit staff shall obtain a response from the physician to the allegations in the mandated report. When required, staff shall also obtain additional information about the physician, including comprehensive evaluations of the physician from his or her hospital affiliations. Staff shall present the report, the physician's response and any additional information obtained to the Data Repository Committee, along with a recommendation for action. After reviewing the report and any additional information presented, the Data Repository Committee shall make one of the following recommendations:

- request additional information;
- close the matter with no action;
- close the matter with a non-disciplinary letter of advice, concern or warning;
- invite the physician to appear before the Data Repository Committee; or
- refer the matter to the Enforcement Division for further investigation.

Data Repository Committee Conferences

In some circumstances, the Data Repository Committee may recommend that the physician appear before the Committee to discuss the matter that is under review. Physicians invited to meet with the Committee will be advised of their right to legal representation at the conference. Physicians will also be advised that any statements made during the conference could potentially be used as evidence in a Board investigation of the matter.

At the conclusion of a conference with a physician, the Data Repository Committee shall recommend closure the matter with no action, or with a non-disciplinary letter of advice, concern or warning. The Committee may also recommend referral of the matter to the Enforcement Division for further investigation, if it determines that a referral is necessary. Upon closing a matter, the Data Repository Committee may request that a physician voluntarily undertake certain remedial actions, such as continuing medical education on a specified topic.

Retention of Mandated Reports

All mandated reports reviewed by the Data Repository Committee shall be kept in the physician's Data Repository file following closure of the matter. The report and all supplemental information gathered in connection with the Data Repository Committee review will be confidential, subject to the requirements and limitations of M.G.L. c. 112, § 5, M.G.L. c. 231, § 60 B and 243 CMR 1.03 (14).