



2017 NCSBN Discipline Case Management Conference - National Practitioner Data Bank Reporting, Policy Center and Infographics Video Transcript
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Event

2017 NCSBN Discipline Case Management Conference

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Presenter

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- [Kathleen Russell] Okay. Well, I'm going to talk about one of my favorite things, the National Practitioner Data Bank. And when I first came to NCSBN, that was one of my first things my boss said, was, "I need you to learn all about this. I need you to become friendly with the federal government employees, and to be able to answer anybody's questions or get a quick question." So, I must say, my contact, Bill West, who's a nurse and he's at the National Practitioner Data Bank, which now I will call NPDB, he is a wonderful guy and we've met several times and we email weekly and probably talk every other week. So, I can get an answer to anything really pretty quickly, if it's something that I haven't already answered and know the answer to it. But I always like to review all of this, especially with the attorneys in the room. It's not that the rules have changed, it's the interpretation of some of the rules are a little bit different and they're a little bit clearer. So, I will proceed with this presentation. So the reason why things are a little bit clearer related to NPDB is because they rewrote the guidebook for the first time since NPDB was created. And so they did that in 2015 and there was a great comment period and they received over 300 comments. A lot of them were mine, only probably about 50. But it was just on wording and explanation, so it was completely updated. It incorporates, for those of you that have been around a while, we used to have two data banks. We had NPDB and we had HIPDB. NPDB came first and it covered the physicians and the dentists. And then HIPDB came and that included so many other providers. And then the Affordable Care Act came and one of the things they tagged along into that was that we'll combine to one data bank. That's really, why do we have two? And so they did that with the Affordable Care Act. And I have asked my contact, what happens if the Affordable Care Act goes away? This legislation doesn't go away. So we'll still remain as NPDB, it's not like HIPDB is coming back. What's great about this guidebook, it has many, many more examples. It has really clear tables and it has live links in it. So, if you're looking at it online, you can link right to the definition of a word that you may not understand. Or you may understand but not know what NPDB means by that. One of the things the new guidebook did not do is it did not make any revisions that required any legislative changes. So, no changes were made, it's just the interpretation. So, the previous slide was what it looks like if you downloaded a PDF of it. And this is the guidebook if you go online. And you see at the bottom of most of my slides where there's the address for where that can be found on the data bank website. So, you can search up in the corner for a keyword but you can actually just go to one of the chapters and it's really easy to find. We are in chapter E, and that's why I have that one highlighted in

purple, because that's where everything that really is pertinent to us is at. So, the three key points to remember about an action and whether or not it's reportable are these: actions taken against a health care practitioner, as a result of formal proceedings, and publicly available. Now I'll define each of those for you because they're kind of surprising. So, an action is any adverse action taken by a Board of Nursing. So, how do you know if your letter of concern is an adverse action? Your legislation will tell you. In your state legislation, there's a list of adverse actions. If a letter of concern is not written in that list, it's not an adverse action. It's something the board can do but it's not an adverse action, it's not categorized that way. But, of course, it includes revocation or suspension of license, reprimand, censure, probation, or any dismissal or closure of a formal proceeding because the nurse surrendered the license or because the person left the jurisdiction while they were under investigation. It also includes any other loss of license or the right to apply or renew for a license. And this for a long time was unclear. People did not know they needed to report a denial of licensure and a denial or renewal of licensure. And you do need to report those things except for non-renewal because someone didn't pay their fees, or they retired, or they changed to inactive status just because they didn't want to practice anymore. This one would seem like I wouldn't need to define either but I do, because it's not only the person who's licensed but it also includes any individual who without authority holds themselves out to be so licensed or authorized. So, that's known as your impostor, so someone that doesn't have a license is still considered a health care practitioner. So, that's why we need to report impostors and the cease and desist to the data bank. And as a result of formal proceedings, again, one would think, "Well, that's maybe a hearing, right? Something mere formal." But it's not. The definition of formal proceedings is written broadly to include just about anything the Board of Nursing does. If it's your routine, policy, or rules, or way that you do things, it also can include a hearing. But a formal proceeding is pretty much anything the board does. Publicly available can mean that a person can obtain that information off of your website but also if they called up and they were able to get licensure information or discipline information on someone. If they wrote to you and you were able to give them that information, the electronic media that I mentioned, if it's published in your newsletter, in the minutes to your board of directors meetings that are posted online, that means they're publicly available. So, if you have a yes to the first and to the second and to the third, it is reportable. That's the easy part. Now we'll go to the exceptions of the three key points. And these are exceptions to the publicly available key point. If you have an adverse action or any other loss of license or right to apply, or dismissal or closure of a formal proceedings because the practitioner surrendered the license or left the jurisdiction. So, those things might not be on your website for some reason. And actually, there are some boards of nursing that do not post their disciplinary actions on their website. Well, that doesn't mean it's not reportable for these particular actions, revocation, suspension, reprimand, censure, probation, or the denial of license or denial of renewal. Or if someone leaves the jurisdiction or surrenders their license while they're under investigation. So, it doesn't matter if you don't put those on your website, those are the exceptions to the publicly available. So, let's look at a few specific examples, I chose just a few this time. So, we'll look at administrative fines and formal monetary penalties. So, again, they're reportable if they're an adverse action and they result from a formal proceeding. There are some fines that are considered administrative or technical in nature, but those must be reported also if they're publicly available, connected to the delivery of health care services, or taken in conjunction with another action. So, let's say you find someone because they didn't renew their license on time. That's not reportable, it's not connected to the delivery of health care services, and it's not taken in conjunction with another action. Now, if your board does suspend the license when it expires and then finds the person, then the fine is reportable because you've got one of those other actions. Let's say the nurse needs some remediation and you thought in addition to the remediation, let me find this nurse that, you know, what she did in documentation was so important, we

also want to find her and give her remediation. If it's related to nursing care, then it's a reportable fine. So, if the violation, so you have to look to the violation. So, let's look at a few of them. So, say the nurse fails to report criminal conduct on the renewal application and you fine them. It's a formal proceeding, it's publicly available. And if your board considers a fine an adverse action, then it's reportable. If your board does not consider the fine an adverse action in your list of adverse actions, then it's not reportable. So, another example is a nurse fails to report criminal conduct on their renewal application in this board, does it reprimand for doing that and a fine? Well, then it's reportable because it's combined with a reprimand, which is an adverse action in most states. Denial of initial or renewal applications. Let's look at what makes it reportable: if it's an adverse action and it results from a formal proceeding. So, say the nurse misrepresented their credentials on their application. And after a formal proceeding, and what we mean by this is that you're looking at one person. You know, if you do a criminal background check, that's not really an investigation on that particular person because you're doing that for everybody. So if you've singled out this one person and you've looked at them and talked about it at the Board of Nursing in a formal way, which is any way, you can deny the applicant because of the misrepresentation of credentials. The same thing, if someone has criminal conduct. If you deny the applicant because of criminal conduct, then it's a reportable action. What's not reportable are things like the person didn't mean the threshold criteria for licensure. You deny them because they didn't pass the NCLEX, you deny them because their school isn't an approved school, then that's meeting the threshold criteria and you don't deny that person. Okay. Withdrawals and failure to renew while under investigation. So, what constitutes an investigation? It's like what I said before about the criminal background check. You're doing that on everyone so that's not an investigation. But if you get the criminal background check back and something pops up, but then you look further at that nurse, then it's an investigation. So, it has to be focused on a specific nurse, the nurse must be notified, and it starts from the start of the inquiry until a final decision is reached. Now, some boards of nursing have a different definition of what an investigation constitutes, like you might have a phase in your board that is, you know, this is where I'm going to triage the complaint and this is the investigation section, and this is the prosecution section. You have to go by NPDB's definition, which is it runs from the beginning of the inquiry till a decision is reached. So, an example is the CBC causes the board to further examine the person, that's an investigation. And then, like I said, you begin a non-routine inquiry. Maybe it's the school looks funny, the transcript looks funny, and now you begin to look at that specific nurse. Now, it depends what stage you're at as to whether or not it's reportable. So, if someone is under investigation by the Board of Nursing and they decide to withdraw their renewal for licensure or they failed to renew, that is reportable. However, what is not reportable is the bottom, right there, withdraw for any reason of an initial application. Now, we don't really understand why there's a differentiation here between a withdrawal during a renewal, but they're giving a second chance to someone who is being investigated on their initial application. And if they withdraw for any reason their initial application, then that's not reportable. This came up on a call the other day with the Discipline Knowledge Network, state expungement of a disciplinary record. The National Practitioner Data Bank does not recognize the state expungements as a reason to void the NPDB record. A state expungement removes the practitioner's state public record but does not vacate or change the NPDB record. What you should do is file a revision to action report with NPDB or to Nursys if you're participating in Nursys, to note that an expungement has occurred. So, we do have a system though within Nursys where you can remove the expunged action in Nursys but still leave it in the NPDB record. And this is very specific directions, you have them in your book, plus you have a tip sheet at the end of the book. So, I'm just going to run through them here where you do a revision to action, you state in a narrative what's going on. You verify that that revision to action was accepted by NPDB, you know you're looking for a DCN number now. And after one day,

you will see that DCN number. You mark the case for deletion in Nursys, you choose void and you select the reasoning, discipline case was expunged. You verify that reason in an email to Nursys. And that has come from the executive director or the designee for the executive director that's on file with Nursys. And then once Nursys receives that information, then they make sure it was reported to the NPDB and then they remove, they delete the case in Nursys, so the expungement is gone from the state record. It's available at NPDB. And NPDB, the queriers to NPDB are a little bit different than our public Nursys, anyone can query our public Nursys database, but only employers and other particular individuals, not you and me and the patient,. It's mainly for employers to be able to look at the records of the nurse. They will be able to see it. Something else new, the NPDB website is they have this new infographic, and we'll go through it piece by piece because it's kind of tiny here. But the things at the beginning we just covered, you know, these things about what is reportable. What we're going to talk about now are these below here. So, revision to action reports. One of the things I'm always asked by NPDB to make sure I teach the boards of nursing is that it's like a file. I picture it like what Catherine or Angie, or Barbara talked about. It's a file. So, if there's an initial action and then you revise that action, that needs to come in underneath the initial action. And then any other action underneath that. So, if you do a probation and then later you change it to suspension, that's not a new initial action unless it's a new violation. But it should come in under a file so that it's all stacked. So, there's many different modifications of an order, you know, someone was on probation and the suspension was stayed, and now they failed the probation, and you want to move it to suspension. You are modifying the order. Maybe you're extending the probation or you reinstate the person after they've completed their discipline, that's a revision to action. And say, someone had been in an alternative to discipline program, had fallen out of that, and now as a result of their conduct, they're suspended, that would go as a revision. Correction reports are different. Correction reports actually take out the initial action. It's maybe because you put the incorrect time period of the probation. You said it was for two years and it was really for three, and you're just going back in to fix that, that's not a revision to action, that's a correction. Maybe you chose the wrong code for the violation and you realized that later and you want to go back in and change the code. So, those types of things are correction reports, and they replace the initial report. So, it's different than a different disciplinary action. This is you made a mistake and you need to correct that. Voiding a report. There's only three reasons by NPDB that you can void a report. You submitted it and you shouldn't have. So, you submitted it and you realized that, "Oh, a letter of," I can't think of it, letter of concern. Sorry, letter of concern. You've realized, "Oh, that's really not reportable because that's not an adverse action." You can void that. You put the person's name in wrong and you got a different licensee. The action was overturned, this is a big thing for why you can void a report. Say that this went up to the trial court or the appellate court. And if the court overturned it, then it can be voided. But like I said before, expunge is not a reason for voiding the NPDB report. This is a Notice of Appeal report. Whoever has put in a Notice of Appeal into NPDB or Nursys? Yeah, I think we don't do this one very much, but we do get notices of the appeal. And you have to think of who is the querier? Who needs this information? NPDB doesn't need this information, the querier. So, if someone's case is on appeal, shouldn't the employer that looks at it know that it's not a final action, that something else is going on? So NPDB says that the Notice of Appeal notifies NPDB that there's a formal appeal to the adverse action. And so, what it does is it provides the reporting entity with a report verification document. It also sends a notification to the subject, you know, that's the nurse, and to all queriers within the past three years. So, if someone has queried, an employer's queried and saw that the person was on probation, and now there's an appeal, they will send that Notice of Appeal to the querier and any others. You're supposed to report that within 30 days of the notice to the Board of Nursing. So, here's another new part on the NPDB website, this is the Policy Corner. And this is, again, a real nice area where you

can get your questions answered. Not to say you can't call me, but it's available. So, it's an NPDB Policy Corner, so you will click it down at the bottom and you'd come to this page, and you'd see all these links. There's a couple...whoops, I'm going to go back one, two, there we go. There are a couple that are real important to us, so we'll take a look at those. So, the one I have highlighted there is state licensure and certification actions. So, if you clicked on that, what they've done is they've taken the most common questions that they get and they've kind of have an FAQ sheet here. So, we can look at how should a State Licensing Authority report actions when they are changed by court order? Well, we just learned that one. But in case you were looking for that on the website, you just click on that link, it's live, and it will go to the question and the answer. Here's a couple more. So, they're really pretty short, pretty clear, and are really common questions that regulatory boards have asked NPDB. So, now we're back at the Policy Corner, and let's look at reporting impaired practitioners. So that would be a live link, you'd go to this page, and it talks about how, you don't report an impaired practitioner that's going into an alternative to discipline program, unless there's an adverse action that goes along with that. So, say they have to be on probation or have to be on suspension during a certain time period. That needs to be reported to NPDB, but not that the person is in a program. So, in going back to the Policy Corner, this is also another good one, is the use of private agreements. People wonder, "Well, if my action is in a confidential consent order or any kind of consent order of any kind, is it reportable?" And this goes through you can't name, you can't slap a name on the action that's reportable to the NPDB that will then make it not reportable. So, if you call it private, it doesn't matter. Still, if it has a reportable action in it, it needs to be reported. So, just examples of the types of things that are available on that website now. I also do these little tip sheets from time to time. I just made one for the state expungement. You have a full size version in the back I believe. And another one I've done in the past is reinstatements, and some more tip sheets. This one is on member board notifications, this one is on if you want to look up a disciplinary report in Nursys. So, sometimes they're related to Nursys, sometimes they're related to NPDB, they're all on the Hive, so you can get to them from the Hive. Also, if you just Googled tip sheet on the NCSPBN website, you would be able to get to them right there because they're listed on a page there. So, what are your questions related to reporting or anything else? Can you go to the microphone? It's right behind you. - [Woman 1] In the slide, you mentioned denial of an application. What about in the context of just not submitting the application, for example, for renewal, the failure to submit? All of our licensees have to apply for renewal, and there's just just some basic requirements of fee, continuing education. And so, is it strictly denial or is it just a failure to renew, is that included? - It's both. If they're denied, that's reportable for something that's other than the threshold requirement. Okay? If it's a failure to renew, it's not reportable unless they're under investigation. So, does that help? Okay. Questions, yes. - [Woman 2] Kathy, I have just one question about expungements. Do you have a sense of how many states allow expungements of disciplinary actions? - I do not, but we can ask, because most of them are here. Can I have a show of hand? Or how about if you stand up one from each state because I can't really see the hands. If you're from a state that does allow state expungement of disciplinary actions. One, two, I know Illinois does. - [Melissa] Hi, Melissa Hanson from North Dakota. We only allow expungement of practice without a license because it's no longer disciplinary action anymore, so that's the only thing we expunge. - Okay. And I know that Illinois does for certain reasons, for like failure of paying an income tax, child support, student loans. And it has to be seven years beyond that time period. Who else? Morgan, did you stand? Can you tell us what circumstances your state expunges? - [Morgan] We allow it. We allow, in Kentucky, expungement of disciplinary orders, even orders for limitation, probation of licensure after 20 years if there had been no intervening disciplinary actions and the licensee has satisfied all the requirements of their order. - Wow. I forgot to mention that about the Illinois one, too, is that in that seven years, there has to be no other actions. Angie, tell us about your

state? - [Angie] In North Carolina, we do the same thing that the lady just mentioned, it's with a lapsed license, so practicing without a license if it was lapsed. That's the only expungement. - Any other state that use expungements? Okay. Any other questions? No? Comments, concerns. - [Marlene] Good morning. - I can't see you, but hello. - Marlene Carbolito from Guam. Can you talk a little bit about entering a licensee who's under investigation? - Entering, well, we have our nurse alert function, so that's the only thing that...you can't report the person if they're just under investigation. In fact, the NPDB doesn't want you to do that. - How about if they are uncooperative or if they've surrendered their licenses? - If they surrendered their license during investigation, yes, then that's reportable. But being uncooperative is not reportable. Any other questions? Yes. - [Woman 3] I recently reported working on a lapsed license. It got reported to the National Practitioner Data Bank and the individual went into the National Practitioner Data Bank and wrote a big paragraph about how she didn't agree with that and defaming the Board of Nursing. Do we have any obligations to go in and put anything in there or is it just information purposes? - The practitioner does have a right to go in and dispute or make a comment. So, if they make a comment, it just ends there. It's a comment that's on the data bank. If it's a dispute, if they file a formal dispute with the data bank, then it goes through a dispute process, and there's actually two levels. They'll look at it once, they'll see if it's a reportable action, if it's a violation, you know, they'll look at just some basic things. If they then move it to a second level, there can be a dispute where they ask the Board of Nursing for more information. You know, they might ask the Board of Nursing for the board order or something like that. And I saw one of those recently, and it's not that I won't tell you the state, which I wouldn't, but I can't even remember the state, but it was something where the nurse went to an unapproved school that was telenursing, or it was an online program, sorry. And in that state, it wasn't allowable for the program to practice online nursing in that state. So, the person got denied a license and she elevated it to the dispute process. They elevated it because they're thinking, "Well, there's no evidence in the record, in the NPDB record that says the nurse knew that the program was not approved in the state that she was in." So, then they asked the Board of Nursing for information for the board order, for whatever documentation they had, and then they still had question because they still had nothing in the record that said the nurse knew this and falsely applied. So, that's the only dispute I've been involved in. I don't think it's very common. There's any other boards, do you have a dispute example, an NPDB dispute example? Yes, someone is coming forward. - [Val] So, Val Smith, Arizona. Typically, disputes are uncommon, but most commonly, the dispute is not the level of discipline of the adverse action, it's the narrative. So, I would caution you all to make sure your narrative accurately reflects what's in your discipline document. - Right. And that's something since I have seven minutes left, I wanted to talk about a little bit, is the narrative. The narrative doesn't... you know, sometimes when you do something in NPDB or in Nursys, the report gets rejected. You know, like you didn't fill out the birth date or something like that, and it gets rejected. You can write the wrong thing in a narrative and it doesn't get rejected because the algorithm that's set up for the narrative is only that it has to be less than 7,000 characters and not have a live link in it. Okay. Those will be the only things that the machine, the database will kick it out for. But there are lots of things that I see that are incorrect in narratives. So, it doesn't mean because you wrote it that way and NPDB didn't bounce it back to you that you had a correct narrative. So, you have to really be careful. What's really unhelpful is if you say in your narrative, 'See attached board order.' Now, you know that in Nursys, we attach the board orders. If you send them in in the attachment process, they get attached to the file. We have a very sophisticated database that just covers four and a half million licensees. The NPDB database is sophisticated in its own way, but it covers millions of licensees because it covers opticians and physical therapists, and every kind of health care practitioner you could think of. They, when you enter into Nursys and you attach the board order, it does not move to NPDB. They don't have the capacity to receive it. So, if you

write in your narrative, 'See board order,' that's an incorrect narrative. And what the narrative really is there is to tell a little bit about the story of what happened. It shouldn't be suspension was ordered because of a violation, E4 violation. That doesn't tell anybody anything different than what the codes were already. It should explain a little bit of the story. And most of you have finding of facts in your board orders. So, it needs to be something from the findings of fact. What happened? You know, the nurse diverted medicine, the nurse had three occasions of documentation issues, the nurse assaulted a patient. You know, it needs to explain a little bit more than what those codes are. So, when the querier looks at it, they say, "Okay, suspension, criminal conviction. Well, what did that nurse do?" You know, every state is different on what criminal convictions get for discipline. So, what will be helpful in there is to know this was a sexual abuse case, this was a sexual abuse case of a patient. That the querier needs to know a little bit more specifics, and that's why NPDB wrote the narrative. Now, I do caution you, as Val said, take something that's in the order, in the words of the order, in the findings of fact, to move that into the narrative. That's what makes it helpful for the querier and then doesn't get you into trouble with someone saying that disputing the NPDB claim because of the narrative was not correctly written. I'm not sure who and each of your Boards of Nursing is the person to enter into Nursys, but if it is someone that's a data entry person and not involved with the investigation, we suggest that someone approve the language and the codes before it gets entered into Nursys and into the data bank. That it shouldn't be the data entry person that goes through the order, and I have heard of this, goes through the order and picks out what the violation is and picks out...you know, the action is not too hard because if it's suspension, it's a certain code. If it's probation, it's a certain code. But for the violations, they can be interpreted to different violation codes. So, make sure someone approves the entry before it gets entered. Any other questions, comments, difficulties, concerns? No? Okay. Well, if you don't want to come to the front, you can always write it on one of the cards and we'll discuss it on the call. All right. Well, I have just a couple of minutes left, so you can stand up and stretch while our next speaker comes forward. Thank you very much.