

Mcare Licensing Reforms

Self-reporting requirement

The Mcare Act requires physicians to report certain events to their respective licensing board.

Reportable events. The Department of State Web site (www.dos.state.pa.us)¹ identifies the following as the reportable events:

- **Service of a complaint** in a professional liability civil action,
- **Disciplinary action** by a health licensing board of another state,
- **Conviction** of a controlled substance crime, and
- **Arrest** for any of the following: criminal homicide, aggravated assault, a sexual offense, or violation of the controlled substances act.

The actual Mcare language is somewhat confusing and may require a self-report of additional adverse criminal dispositions. Consequently, physicians who are the subject of any adverse criminal disposition (other than a summary traffic offense) should consult with their attorney as to whether the event must be reported.

Timing. The report must be made within 60 days of the reportable event — e.g. service of the complaint.

Content. In the case of a professional liability complaint, the Mcare Act requires the report to include:

- Name of the court in which the action was filed,
- Docket number of the action, and
- Description of the allegations against the physician in the complaint.

Where to report

State Board of Medicine
Attn: Mcare Reports
PO Box 2649
Harrisburg, PA 17105-2649

State Board of Osteopathic Medicine
Attn: Mcare Reports
PO Box 2649
Harrisburg, PA 17105-2649

Additionally, the physician licensing boards have indicated that physicians must provide a complete copy of the complaint.² Although the boards have not incorporated the copy requirement in a legally enforceable regulation, it generally makes sense to comply. The boards accept the copy in lieu of the description of the allegations.

Penalty for failure to self-report. Initially, the physician licensing boards were fining physicians \$250 for the first violation of the self-reporting requirement and \$1,000 for each subsequent violation. Now the boards typically are fining physicians \$1,000 for even the first violation. In the case of professional liability complaints, the boards usually do not impose a fine until after they warn the physician of the physician's non-compliance and the physician still fails to report the event. However, the boards are not required to provide physicians with this leeway, and physicians should not count on receiving a warning.

Effective date. The self-reporting requirement took effect on May 19, 2002. Physicians are not required to report events prior to that date. In the early stages of implementation, some physicians were erroneously accused of failing to report a complaint served prior to the implementation date. This problem appears to have been resolved. Medical Society members with such a problem may contact the Society's Department of Regulatory Affairs at 1(800) 228-7823, Ext. 1459.

¹State Board of Medicine, Important Notice Regarding Act 13 of March 20, 2002, <http://www.dos.state.pa.us/bpoa/lib/bpoa/20/medbd/newmcare.pdf>.

²See Important Information for Physicians Regarding Mcare Reporting, http://www.dos.state.pa.us/dos/lib/dos/mcare_website.pdf.

Complaint versus writ. A professional liability action can be initiated by a complaint or a writ of summons. A complaint describes the alleged factual basis for the lawsuit. A writ typically is a one-page document that provides the physician with notice of the lawsuit and identifies the parties, but provides no detail as to what it is about. A writ typically is used when the case is filed close to the expiration of the statute of limitations and there was not sufficient time to prepare a complaint. If an action is initiated by a writ, the defendant can require the plaintiff to file a complaint, but it is not always advisable to do so. While physicians should immediately report receipt of either a writ of summons or a complaint to their professional liability carrier, the licensure boards only require physicians to report to them when the physician is served with a complaint. Physicians need not notify their licensing board when they are just served with a writ.

Multiple-defendant complaints. Professional liability actions often name more than one physician as a defendant. The physician licensing boards require each physician to file a report. When one physician files a report, board staff crosscheck whether any other named physicians have filed a report. This sometimes results in errant warning letters to physicians who have been named as a defendant but still have time to report because they have not yet been served with the complaint or were served at a later time. Physicians receiving an errant warning letter should advise the BPOA of their differing circumstances, so as to avoid an improper prosecution, and should be certain to report within the required timeframe.

Third party reporting. Physicians sometimes rely on a third party, such as a staff person in their office, their employer, or their defense attorney, to file the report. However, if no report is made, the physician remains responsible, regardless of whether the physician made arrangements for the report to be made. The physician licensing boards have not been sympathetic when physicians blame others for their failure to report.

Consequently, it is imperative that physicians, who have delegated the task, follow-up to ensure that a timely report has been filed.

Reporting form. The Pennsylvania Medical Society has developed a self-reporting form for professional liability complaints. [A copy is provided in Appendix D, p. 56.] Members also may download a generic form for all required Mcare reports from the Medical Society's Web site (www.pamedsoc.org).^{3]}

³http://www.pamedsoc.org/Template.cfm?Section=LRIndex_Index1&template=/ContentManagement/ContentDisplay.cfm&ContentID=8406.

Professional Liability Complaint Self-Report

Attn: Mcare Reports
PO Box 2649
Harrisburg, PA 17105-2649

Licensing board	<input type="checkbox"/> State Board of Medicine <input type="checkbox"/> State Board of Osteopathic Medicine
Physician license number	
Physician name	
Business address	
Office telephone number	
Attorney contact information (Optional)	
Date served with complaint	
Court where case is filed	
Docket number	
Description of allegations against physician	<input type="checkbox"/> See attached complaint

