

THE DATA BANK



In Part 1 of this report on the National Practitioner Data Bank (Data Bank), I covered the background and history, reporting requirements, consequences of entities that do not report when they should, as well as consequences of being reported, and information about which entities have access to the Data Bank. In this part, I will discuss other aspects of the Data Bank, which include efforts to limit information that has to be submitted to the Data Bank, efforts to make information filed with the Data Bank available to the public, the impact a Data Bank report can have on your dental practice, and the basic components of any malpractice-related Data Bank report.

Public Access to the Data Bank

Proposals have been made to limit reportable incidents to refunds, judgments, settlements, etc., over \$30,000. Such a minimum would eliminate a large number of dental-related events. However, the proposal would have to become law, and several organizations, including OB-GYN physicians, have been opposed to such a minimum in the past.

Proposals were made early on for the general public, as well as third-party payers, to have access to the Data Bank. In July 1993, the *ADA [American Dental Association] News* published an article wherein Blue Cross Blue Shield of Kansas was reported to be seeking status as an entity that could legally query the Data Bank. The reason was commercial; the third-party payer could advertise to potential buyers that they provide peer review or quality assurance because they screen potential dental participants. To date, however, no third-party carriers have been granted Data Bank access, but plan contracts often contain questions asking dentist applicants if they have ever been reported to the Data Bank.

During the Clinton Administration, Rep. Ron Wyden (D-Ore., now a senator, but at the time, a member of the House of Representatives) introduced a bill — along with Rep. Scott Klug (R-Wis.) — in April 1994 to allow the public to gain access to Data Bank information. The Wyden/Klug plan would have granted the public access to a semiannual publication containing information on adverse actions reported against health care providers. The publication cited would have been available in public libraries and would have

Anatomy of a Data Bank Report

What does a Data Bank report for a malpractice claim look like, and how many pages does it entail? Information is submitted online, and the printed report covers three pages. The first line of the report is the dentist's name in bold, capital letters. The second line is the reporting entity name. The next categories are then listed as follows:

1. Reporting entity and the name of the person submitting the report
2. Subject identification information, which includes the dentist's name, address, organization name, professional school, DEA number, and license number
3. Information reported, which includes:
 - Date of report
 - Amount paid
 - Date paid
 - Total paid
 - Settlement or judgment
 - Description of judgment or settlement and any conditions, including terms of payment
 - Payments by the submitter for other practitioners in the case or payments made by any others for the practitioner in question
 - Classification of acts or omissions:
 - Patient age, gender, and type (outpatient or inpatient)
 - Description of dental condition with which the patient presented for treatment
 - Description of procedure performed
 - Nature of allegation
 - Specific allegation
 - Date of event associated with allegation or incident
 - Outcome
 - Description of allegations and injuries or illnesses upon which the action or claim was based.

Finally, if the subject dentist has submitted a statement, it appears at this point of the report.

included information on license suspension/revocation and malpractice payments for health care practitioners with two or more separate incidents. Other provisions of this bill would have allowed established provider networks, especially PPOs, to have access to the Data Bank to facilitate selection. Several consumer organizations jumped on the public access bandwagon. The ADA was an opponent of any public access, and ultimately, this bill went nowhere. Hearings on this topic also were held in 2000, yet public access remains limited.

Dental Malpractice Reports

The most recent statistics published by the Data Bank are through 2012. A total of 51 percent of all reports submitted over the past 10-year reporting period were for medical/dental malpractice. Dentists made up only 11 percent of the malpractice payment reports submitted to the Data Bank for dentists, physicians, and nurses.

There are some circumstances in a claim process where pretrial or pre-arbitration agreements such as high-low contractual agreements may mitigate Data Bank reporting. In a high-low agreement, there are specific amounts agreed upon that guarantee the low end being paid to the plaintiff, even if he or she loses in court, and the high end being the cap, even if the plaintiff wins in court. Some insurance companies interpret these as contractual agreements between the insurance companies and the plaintiff's lawyer that may exempt a Data Bank report from being filed. However, according to Data Bank guidelines published in October 2015, if the practitioner is not found to be liable in the case, but the agreements stipulate that a payment be made through the agreement, this payment is not reportable because the payment is not being made for the benefit of the practitioner. Of course, if the arbitrators or jury find in favor of the plaintiff, then the high-end payment is enforced and must be reported, according to the Data Bank guidelines.

Others argue that if a Notice of Intent to sue is the only written document in a claim, then any settlement paid by the malpractice insurance carrier does not need to be reported under the "no written complaint" rule. However, interpretation of these rules may be up to your insurance carrier, which may decide to file a Data Bank report regardless of various circumstances simply to avoid the potential for the up to \$11,000 fine for nonreporting.

On the other hand, it is unlikely that a state dental association considering adverse action to remove a dentist from membership based on a formal peer-review process and on complaints regarding the dentist in question's professional competence or professional conduct would be eager to file a Data Bank report. This author would be interested in learning whether or not such a Data Bank report has ever been filed under that circumstance by any ADA- or AGD-related organization during the past 25 years.

The most recent statistics published by the Data Bank are through 2012. ... Dentists made up only 11 percent of the malpractice payment reports submitted to the Data Bank for dentists, physicians, and nurses.

As covered in Part 1, published in the March 2016 issue of *AGD Impact*, Data Bank requirements have evolved and been subject to change and may continue to be subject to change in the future. For most dentists involved in malpractice actions, there is a lot of trauma, which is essentially compounded by the "black mark" necessitated by a Data Bank report if the dentist's insurance company makes a settlement or the dentist

sustains an unfavorable judgement in court. Whether the case is meritorious or not, the situation must be reported. The dentist does have some recourse, however, in the event that the report is inaccurate or otherwise offensive. Whenever an entity submits a required report, the subject dentist is provided with a copy of the report that he or she may dispute. Furthermore, a relatively new provision to the Data Bank allows a reported provider to submit his or her own side of the story as part of the official Data Bank report. A dentist, thus, may write a 600-character statement, or about nine word-processed lines, that can become a part of the report.

One requirement of the Data Bank that may have a deleterious effect on a dentist is that a copy of the report has to be submitted to the applicable board of dental examiners. It is possible for a board to review the report and decide to launch an investigation if it thinks the event causing the settlement or judgment is significant enough to warrant action against the dentist, which could lead to probation or even suspension of the dental license. In some jurisdictions, the state board requires any claim against a dentist to be reported anyway, so the Data Bank report would likely have little consequence.

Has a Data Bank report been deleterious to any dentist in terms of participation in dental insurance panels or licensure in other states? I am not familiar with any such scenarios, although if the amount of any settlement paid is substantial enough, the facts of the claim or circumstances resulting in a lawsuit or claim could be considered in any decision to accept or disallow a dentist from being a part of any panel. Whether the reviewers consider the claim to be meritorious may bear the most weight.

Depending on your insurance carrier, you may have the opportunity to provide input into how the report is written in terms of detail and the categories of allegations that must be selected by the reporting entity. Some reports I have reviewed from other carriers are detailed in the information provided. Others are minimal. As mentioned earlier, the dentist also has the prerogative to dispute the report or submit his or her own statement that becomes a permanent part of the report. ♦



Richard C. Engar, DDS, FAGD, is CEO of Professional Insurance Exchange Mutual Inc. He currently maintains a faculty position with the University of Utah School of Dentistry. To comment on this article, email impact@agd.org.