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January 31, 2014

Ms. Ernia Hughes, Acting Director  
Division of Practitioner Data Banks  
5600 Fishers Lane  
Rockville, MD 20857

Dear Acting Director Hughes:

On November 22, 2013, the National Practitioner Data Bank released a draft copy of the updated NPDB Guidebook. In accordance with the guidance issued along with the draft's release, PIAA formally submits our comments on the draft in preparation for its public release later this year.

### ***Interest of PIAA***

PIAA is the insurance trade association representing medical professional liability insurance companies, risk retention groups, captives, trusts, and other entities. PIAA members insure more than two-thirds of America's private practicing physicians and 3,000 hospitals as well as dentists, nurses and nurse practitioners, and other healthcare providers. PIAA is unique—it is directed by companies that are owned or operated by the healthcare practitioners they insure. This structure gives the Association a very special dual perspective: that of its MPL insurer member companies, and that of the healthcare providers they insure. As a result, PIAA member companies understand the perspective of those who report, those who are subjects of reports, and the consumers the NPDB is designed to protect.

### ***Comments***

Our comments on the NPDB Guidebook are listed in order of their placement in the draft, and do not necessarily reflect a prioritization of the comments themselves.

#### ***P. A-11 & E-4: Terminology Differences***

It appears that the references to "terminology differences" stem from specific issues which have arisen regarding whether or not reporting is required. Examples under this heading would greatly benefit reporting entities and may help stem future confusion about when reporting is necessary.

#### ***P. B-13: "Certifying Official" and "Administrator"***

While the definitions of "certifying official" and "administrator" are both clear, the Guidebook does not explain if the two positions are required to be filled by separate individuals, or if both sets of responsibilities may be filled by the same person. Clarification of this matter would be especially beneficial for smaller reporting entities.

#### ***P. D-6: Civil Actions***

Under the heading "Health Plans," the draft states, "NPDB information also may be used to pursue civil actions against a specific health care practitioner, provider, or supplier." Are such civil actions

limited to allegations of fraud, as referenced earlier in the paragraph, or are there other elements of *civil litigation* for which a health plan may use NPDB information against a healthcare practitioner?

*P. E-7: Initial Report*

The definition of an “Initial Report” under the subheading of the same name should be clarified. PIAA suggests replacing the sentence, “An initial report is defined as “the current version of the report unless the reporting entity submits a Correction Report, a Revision-to-Action Report, or a Void Report,” with “An Initial Report is a completed report which has been submitted to the NPDB and has not otherwise been amended.”

*P. E-16: Naming of Practitioners*

Questions have been raised about whether or not a practitioner must be reported to the Data Bank when he/she is not specifically named at all points during the claims resolution process. The Guidebook muddles such questions by using the term “named” repeatedly, but then stating that a practitioner’s given name does not necessarily have to appear for the reporting requirement to be triggered. This could be clarified by changing the paragraph under the heading “Identifying Practitioners” to read as follows:

In order for a particular health care practitioner to be named in an MMPR submitted to the NPDB, the practitioner must be identified in *both* the written complaint/claim demanding monetary payment for damages *and* the settlement release/final adjudication, if any. Practitioners identified in the release but not in the written demand or as defendants in the lawsuit should not be reported to the NPDB. A practitioner identified in the written complaint or claim who is subsequently dismissed from the lawsuit and not identified in the settlement release should not be reported to the NPDB. The given name of the practitioner does not have to appear in *both* the complaint/demand *and* the release/final adjudication as long as the practitioner’s given name is provided in one step of the process *and* the practitioner is sufficiently described in the other so as to be identifiable.

In addition, it would be beneficial to reporting entities to know what “sufficiently described...so as to be identifiable” means, via both a clear definition and multiple examples. Furthermore, references throughout the entire NPDB Guidebook to reports being required for named practitioners should be clarified so that all parties are aware that “named” may simply mean “identified” and not be an indication that a given name has been provided. As just one example, question #9 on page E-25, absent a clarifying statement and examples, would lead one to believe that an individual still must be specifically named for a report to be necessary.

*P. E-17: Dismissed Defendants*

In explaining when a practitioner must be reported even if he or she is dismissed from a lawsuit, the Guidebook leaves far too much room for interpretation. Specifically, the sentence, “However, if the dismissal results from a condition in the settlement or release, the payment must be reported to the Data Bank,” leaves substantial questions unanswered. If a claimant offers to drop a healthcare practitioner from a claim as part of a settlement agreement, but gives no indication as to whether it is because of insufficient evidence against the practitioner, general ease in resolving the claim, or to more quickly reach a resolution, how is the insurer to know if the dismissal was a “condition” of the settlement?

**Conclusion**

PIAA appreciates this opportunity to submit comments on the new draft of the NPDB Guidebook. We believe the Guidebook can be a useful tool for all stakeholders, and hope that our recommendations are beneficial to you as you make revisions to the document.

Should you have any questions about any of PIAA's comments or recommendations, please do not hesitate to contact me at [batchinson@paa.us](mailto:batchinson@paa.us) or 240.813.614. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "B Atchinson". The signature is written in a cursive style with a large, stylized initial "B".

Brian Atchinson  
President and CEO