

## The Dispute Process

The NPDB is committed to maintaining accurate information and ensuring that health care practitioners are informed when adverse actions are reported about them. When the NPDB receives a report, the IQRS processes the information exactly as it is submitted by the reporting entity. Reporting entities are responsible for the accuracy of the information they report.

When the NPDB processes a report, a *Report Verification Document* is sent electronically to the reporting entity via the IQRS and can be accessed at the *Report Status* screen. A *Notification of a Report in the Data Bank(s)* is mailed to the subject. The subject should review the report for accuracy, including such information as current address and place of employment.

**Subjects may not submit changes to reports.** If any information in a report is inaccurate, the subject must request that the reporting entity file a correction to the report. The NPDB is prohibited by law from modifying information submitted in reports.

If the reporting entity declines to change the report, the subject may initiate a dispute of the report through the dispute process, add a statement to the report, or both. The dispute process is not an avenue to protest a payment or to appeal the underlying reasons of an adverse action affecting the subject's license, clinical privileges, or professional society membership. Neither the merits of a medical malpractice claim nor the appropriateness of, or basis for, an adverse action may be disputed.

Subjects who wish to add a statement to and/or dispute the factual accuracy of a report should follow the instructions on the *Notification of a Report in the Data Bank(s)*. Subjects who do not have the original *Notification of a Report in the Data Bank(s)* may obtain a *Subject Statement and Dispute Initiation* form from the NPDB-HIPDB web site at [www.npdb-hipdb.com](http://www.npdb-hipdb.com).

## Subject Statements

The subject of a report may add a statement to the report at any time. When the NPDB processes a statement, notification of the statement is sent to all queriers who received the report, and is included with the report when it is released to future queriers. Subject Statements are limited to 2,000 characters, including spaces and punctuation. Drafting a statement in accordance with the character limits ensures that the statement contains the information a subject deems most important. All characters beyond 2,000 are truncated. Subject Statements cannot include any names, addresses, or phone numbers, including those of patients.

A Subject Statement is part of the specific report it is filed for. If the report is changed by the reporting entity, the statement attached to the report also is removed. If a statement is needed with the new report, a new statement that references the Data Bank Control Number (DCN) of the new report must be submitted.

## Subject Disputes

The subject of a Medical Malpractice Payment Report (MMPR) or an Adverse Action Report (AAR) may dispute either the factual accuracy of the report or whether a report was submitted in accordance with the NPDB's reporting requirements, including the eligibility of the entity to report the information to the NPDB. A subject may **not** dispute a report in order to protest a decision made by an insurer to settle a claim or to appeal the underlying reasons for an adverse action.

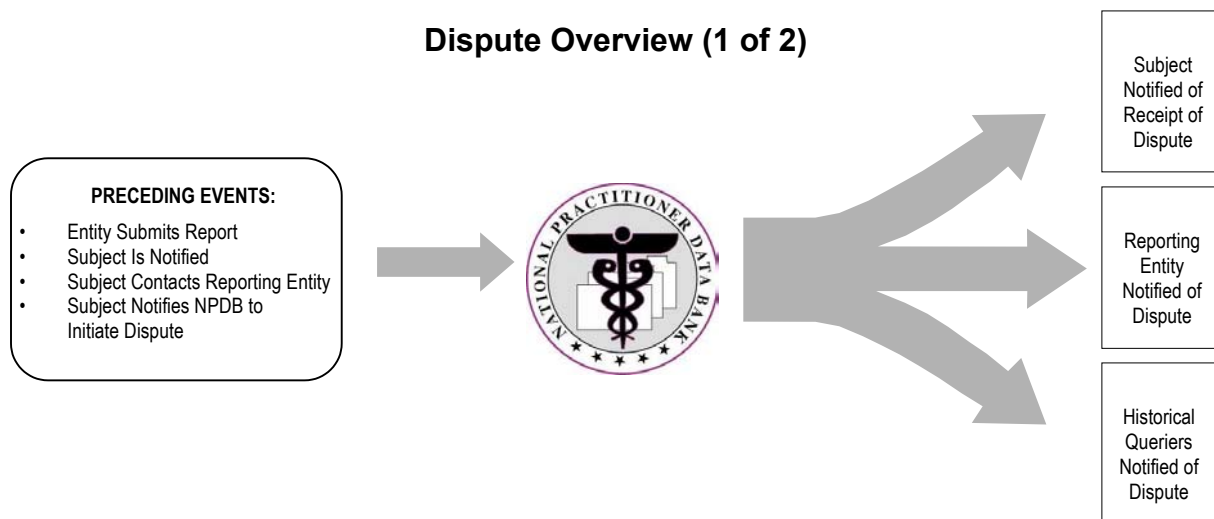
If a subject believes that information in a report is factually inaccurate (e.g., an incorrect adverse action code or payment amount) or should not have been reported, (e.g., a clinical privileges action that lasts 30 days or less), the subject must attempt to resolve the disagreement directly with the reporting entity. **Changes to a report may be submitted only by the reporting entity.**

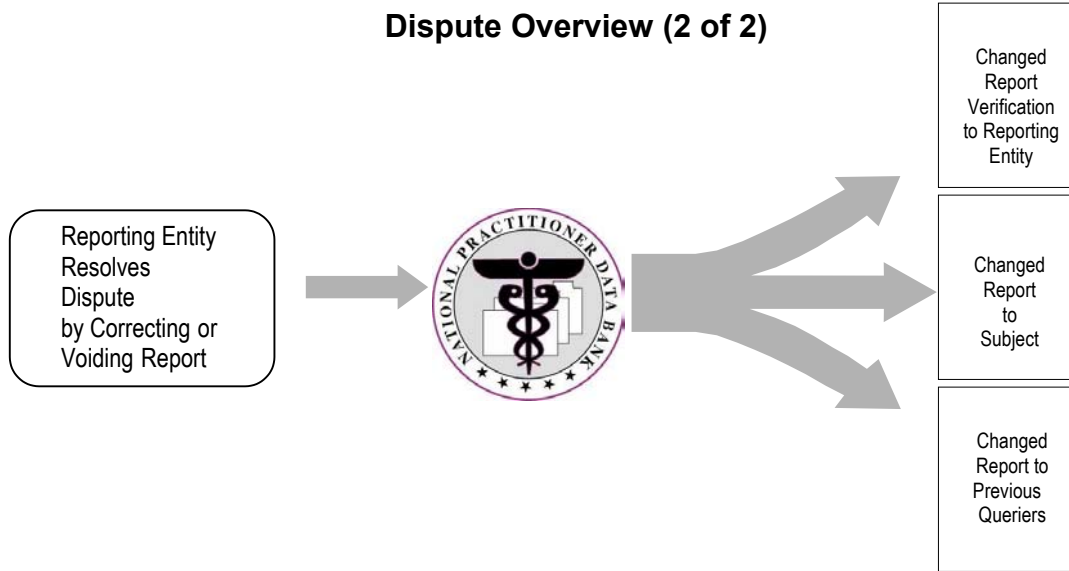
When the NPDB receives a properly completed Subject Statement and Dispute Initiation form from the subject initiating a dispute, notification of the dispute is sent to all queriers who received the report, and is included with the report when it is released to future queriers.

**A dispute becomes part of the specific report it is contesting. If the report is changed by the reporting entity, the dispute notation attached to the report is also removed. If the subject believes that the new version of the report is factually inaccurate, the subject must initiate a new dispute.**

There are three possible outcomes for a dispute:

- The reporting entity corrects the report to the satisfaction of the subject.
- The reporting entity voids the report.
- The reporting entity declines to change the report.





## Secretarial Review

If the reporting entity declines to change the disputed Adverse Action Report or Medical Malpractice Payment Report or takes no action, the subject may request that the Secretary of HHS review the disputed report. The Secretary reviews disputed reports only for accuracy of factual information and to ensure that the information was required to be reported.

The Secretary does not review the merits of a medical malpractice claim in the case of a payment or the appropriateness of, or basis for, a health care entity's professional review action or a State licensing board's action.

To request Secretarial Review of a disputed report, the subject must sign and return to the NPDB the *Instructions for Review of the Disputed Report by the Secretary of the U.S. Department of Health and Human Services* attached to the *Report Revised, Voided, or Status Changed* document related to the disputed

report. The dispute and any accompanying documentation must be sent to the NPDB, not directly to the Secretary.

The subject also must:

- State clearly and briefly in writing which **facts** are in dispute and what the subject believes are the facts.
- Submit documentation substantiating that the reporting entity's information is inaccurate. Documentation must directly relate to the facts in dispute and substantially contribute to a determination of the factual accuracy of the report. Documentation may not exceed 10 pages, including attachments and exhibits.
- Submit proof that the subject attempted to resolve the disagreement with the reporting entity, but was unsuccessful. Proof may be a copy of the subject's correspondence to the reporting entity and the entity's response, if any.

- Wait 30 days from the date of initiating discussions with the reporting entity before requesting Secretarial Review to give the reporting entity time to respond to the dispute.

### **Pertinent Documentation**

**If the dispute relates to a Medical Malpractice Payment Report, pertinent documentation might include a copy of the following:**

- Written claim.
- Settlement or release document.
- Court judgment.
- Written findings of arbitration or other alternative dispute resolution processes.

If necessary, the Secretary will ask the reporting entity to supply additional information confirming that the report was submitted in accordance with NPDB regulations. Entities must respond to the Secretary's request for more information within 15 days. After reviewing all documentation related to the dispute, the Secretary will determine whether the information in the disputed report is accurate and should have been reported to the NPDB.

**If the dispute relates to an Adverse Action Report, pertinent documentation might include a copy of the following:**

- The findings of fact and recommendations of the health care entity, professional society, or State licensing board.
- The final report of the hearing panel or other appellate body upon which the description of acts or omissions was based.

### **Secretarial Review Results**

When the NPDB receives proper notice of a request for Secretarial Review, the materials are forwarded to the Secretary of HHS for review. There are three possible outcomes for Secretarial Review of a dispute:

- The Secretary concludes that the report is accurate.
- The Secretary concludes that the report is inaccurate.
- The Secretary concludes that the issues in dispute are outside the scope of Secretarial Review.

### **Report Accurate as Submitted**

If the Secretary concludes that the information in the report is accurate, the Secretary sends an explanation of the decision to the subject. The subject may then submit, within 30 days, a statement that is added to the report. The statement is limited to 2,000 characters, including spaces and punctuation, and is entered into the NPDB computer system exactly as submitted. The new Subject Statement replaces any statement the subject submitted previously. If no new Subject Statement is received, any existing statement previously submitted by the subject is maintained as part of the report record.

The subject of the report, the reporting entity, and all queriers who received notice of the disputed report are each sent a *Report Revised, Voided, or Status Changed* document containing the Secretary's explanation and the subject's statement. Future queriers will receive the Secretary's and subject's statements with the report.

### Report Inaccurate as Submitted

If the Secretary concludes that the report is inaccurate, the Secretary directs the NPDB to correct the information in the report. The subject of the report, the reporting entity, and all queriers who received notice of the disputed report are each sent a *Report Revised, Voided, or Status Changed* document informing them of the correction.

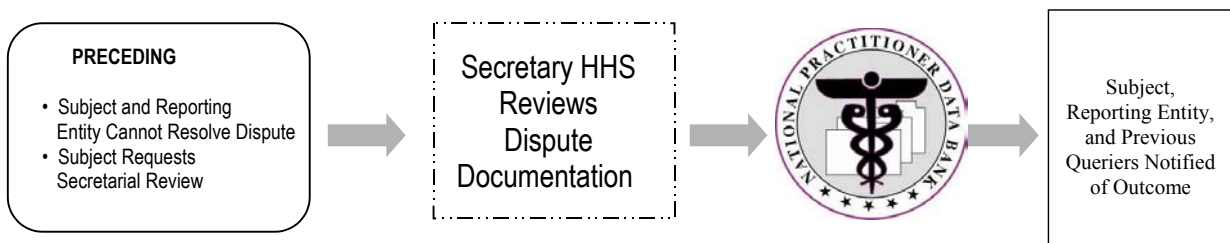
If the Secretary concludes that the report was submitted in error, the Secretary directs that the report be voided from the NPDB. The subject of the report, the reporting entity, and all queriers who received notice of the disputed report are each sent a *Report Revised, Voided, or Status Changed* document informing them that the report has been voided.

### Dispute Outside the Scope of Secretarial Review

If the Secretary concludes that the issue in dispute is outside the scope of review, the Secretary directs the NPDB to add an entry to that effect to the report and to remove the dispute notation from the report. The subject may then submit, within 30 days, a statement that is added to the report. The statement is limited to 2,000 characters, including spaces and punctuation, and is entered into the NPDB computer system exactly as submitted. If no new Subject Statement is received, any existing statement previously submitted by the subject is maintained as part of the report record.

The subject of the report, the reporting entity, and all queriers who received notice of the disputed report are each sent a *Report Revised, Voided, or Status Changed* document informing them of the Secretary's decision.

### Secretarial Review Overview



## Reconsideration of the Secretary's Decisions on Disputes

Although HHS does not have a formal appeals process for reconsideration of the Secretary's decisions on disputes, HHS does review such requests. The subject must submit a written request for reconsideration to the office that issued the Secretary's determination. The subject should be specific about any new information that was unavailable at the time of Secretarial Review and which issues the practitioner believes were not appropriately considered during the review process. The Secretary will either affirm the prior determination or issue a revised finding. HHS, however, gives priority to initial requests for Secretarial Review.

## Improper Requests for Secretarial Review

A request for Secretarial Review is considered improper when the report in question has not previously been disputed by the subject. Before requesting Secretarial Review, a subject must first attempt to resolve the disagreement with the reporting entity and then may dispute the report according to the instructions provided on the *Notification of a Report in the Data Bank(s)* document.

If a subject submits an improper request for Secretarial Review, the NPDB will notify the subject that the report must first be disputed and resolution attempted with the reporting entity.

## Examples of Disputes

### Due Process - Alleged Denial

**Example:** A practitioner alleged that an entity, during professional review, denied the practitioner due process because the reviewers ignored the testimony of medical experts or other witnesses called to prove various points the practitioner felt important to the defense.

**Outcome:** The Secretary determined that the dispute request was outside the scope of review and made an entry to that effect in the report. The dispute notation was removed from the report.

### Due Process - Legal Action Pending

**Example:** A practitioner disputed a report on the revocation of his or her clinical privileges by a hospital on the basis that due process was denied during professional review. The practitioner further stated that since he or she had initiated a legal action against the hospital regarding the due process, the report should be removed from the NPDB until legal action is resolved.

**Outcome:** The Secretary determined that the dispute request was outside the scope of review. The Secretary additionally stated that if a court action resulted in a reportable change to the action previously reported, a second report must be submitted by the reporting entity. This new report could make corrections, be a revision to the action, or be a void of the prior report.

### Licensure Completion - Trigger Date

**Example:** A pharmacy student committed an act of alleged malpractice while in training in the pharmacy of a retail store. The student had no license at the time of the alleged act. However, at the time the payment was made on the student's behalf, the student had completed training and received a license. The practitioner disputed the report on the basis that a practitioner must be licensed at the time of the alleged incident in order for a report to be made to the NPDB.

**Outcome:** The Secretary directed that the report be voided from the NPDB since it has been determined that the appropriate trigger date for determining if the practitioner is licensed is the date on which the reported incident occurred, not the date on which the payment was made.

### Narrative Description - Inaccurate

**Example:** A practitioner disputed a report of a licensure disciplinary action taken by a State board of medical examiners stating that the narrative regarding the act or omission was not accurate. The practitioner requested that the description be changed to reflect the findings of the board.

**Outcome:** The Secretary reviewed the narrative against the findings reported by the State board and determined that the report would be accurate if the actual language from the board's findings were used. The Secretary directed the NPDB to change the narrative. The dispute notation was removed from the report.

### Narrative Description - Legal Sufficiency

The purpose of the narrative description section of the report is to describe the acts, omissions, or reasons for the action reported. Section 423(a)(3)(B) of the *Health Care Quality Assurance Act* [42 U.S.C., Section 11133(a)(3)(B)] requires such "description of the acts or omissions or other reasons for the action." The legislative history states that the narrative "... does not necessarily require an extensive description of the acts or omissions or other reasons for the action or, if known, for the surrender. It does, however, require sufficient specificity to enable a knowledgeable observer to determine clearly the circumstances of the action or surrender."

A significant number of reports do not meet these legal requirements. The following are examples of **legally inadequate descriptions** found in the narrative description section of disputed reports:

**Example 1:** "Dr. X was found to exhibit improper and unprofessional conduct."

**Example 2:** "The ABC Hospital Board took final action on January 2, 1994, instituting a mandatory concurring consultation and monitoring requirement for a 6-month period, following an appeal by Dr. Y."

**Example 3:** "See attached letter."

**Outcomes:** The Secretary required the reporting entities to correct the reports to include more descriptive/explicative narratives. The contents of attachments are not entered into reports.

### **Narrative Description - Misleading**

**Example:** A practitioner disputed a hospital's report that he resigned while under investigation. The narrative stated that there were no questions of professional competence or conduct, but that the issues that led to the investigation and the resignation were problems in the practitioner's bedside manner.

**Outcome:** The Secretary found that the report should be voided because the reason for the investigation as shown in the narrative was unrelated to professional competence or conduct. The hospital changed the narrative of the report to indicate that the investigation was undertaken as a matter of professional competence due to a misdiagnosis of a patient in the emergency room. The practitioner disputed this revised report. The Secretary reviewed the corrected report and the supporting material submitted by the hospital and found that the corrected report showed a reportable event.

It is unclear why the hospital submitted the initial report with language in the narrative that made the resignation appear unreportable. This case serves to emphasize the importance of providing accurate and complete information when composing the narrative section of a report.

### **Privileges - Resignation and Surrender While Under Investigation**

**Example:** A practitioner disputed a report that he had resigned privileges during an investigation concerning professional competence. The practitioner disputed the report on the basis that he was unaware of any investigation and did not believe one was ongoing at the time. The practitioner also stated that he did not resign in order to avoid a review, but because his contract was expiring and he had found a new job.

**Secretary's Response:** The Secretary requested that the entity submit contemporaneous documentation showing that the entity had undertaken an investigation of the physician. Such documentation might have included findings of reviewers or directives of the executive committee or other professional review bodies in the hospital, or minutes from a professional review entity. The entity was unable or unwilling to provide any documentation that an investigation was occurring at the time the practitioner left. Since no contemporaneous documentation of an ongoing investigation was provided, the Secretary determined that the report should be voided.

**The Secretary also stated that the practitioner need not be aware of an ongoing investigation at the time of the resignation in order for the entity to report the resignation to the NPDB, since many investigations start without any formal allegation being made against the practitioner. The reason the practitioner gives for leaving an entity while under investigation is irrelevant to reportability of the resignation.**



### **Privileges - Suspension and Hospital Motivation**

**Example:** A practitioner disputed the report of a suspension of clinical privileges. The practitioner claimed that the motivation for the action was a personality conflict with the chairman of his department, a matter unrelated to professional competence.

**Outcome:** The Secretary determined that the dispute request was outside the scope of review since the motivation of the hospital or individuals involved in the case is not reviewed by the Secretary and made an entry to that effect in the report. The dispute notation was removed from the report.

### **Professional Review - Alternative Employment Termination Procedure**

**Example:** A practitioner disputed a report of the revocation of clinical privileges. The hospital has a system of professional review established under its bylaws and delivers health care services. The hospital also has an “employment termination procedure.” The employment termination procedure was used by the hospital to end a practitioner’s employment without use of the professional review process. The practitioner’s privileges were revoked by the employment termination process, but no action was taken through the professional review process.

The practitioner was given no option in how the termination would occur.

**Outcome:** The Secretary directed that the report be voided from the NPDB since the professional review process had not been followed in terminating the practitioner’s privileges. The termination was not a professional review action.

Some hospitals have stated that if they follow professional review procedures to remove the practitioner’s privileges, they must then follow employment termination procedures in order to fire the practitioner. Hospitals have stated that by following the employment termination procedures, practitioners’ privileges will automatically terminate. One hospital required all physicians on staff to waive their rights to the professional review process as a condition of employment. Health care entities are reminded that in order to be reportable to the NPDB, adverse actions must be the result of professional review.

### **Residency Status**

**Example:** A licensed medical resident disputed a Medical Malpractice Payment Report on the basis that she was in training at the time of the incident.

**Outcome:** The Secretary determined that the dispute request was outside the scope of review and made an entry to that effect in the report. The payment is reportable if the practitioner (regardless of resident status) is named in both the claim **and** settlement or judgement **and** a payment is made on his or her behalf. The dispute notation was removed from the report.

### **Responsibility for Treatment**

**Example:** A practitioner disputed a Medical Malpractice Payment Report because she saw the patient only once and was not responsible.

**Outcome:** The Secretary determined that the dispute request was outside the scope of review and made an entry to that effect in the report. The number of times a patient is seen by a practitioner or the level of responsibility is irrelevant to

reporting a medical malpractice payment. The dispute notation was removed from the report.

### **Settlement - Subject Disagrees**

**Example:** A practitioner disputed a Medical Malpractice Payment Report on the basis that he did not concur with the settlement.

**Outcome:** The Secretary determined that the dispute request was outside the scope of review since the practitioner's agreement to a settlement is irrelevant to the reportability of the payment. The Secretary made an entry to that effect in the report, and the dispute notation was removed from the report.

### **Settlement - Subject Dismissed from Lawsuit**

**Example:** A practitioner disputed a Medical Malpractice Payment Report on the basis that she was dismissed from the lawsuit by summary judgment before the settlement. The order granting summary judgment provided that the practitioner be dismissed from the lawsuit as having no liability, and that the plaintiff make no recovery against the practitioner.

**Outcome:** The Secretary directed the NPDB to void the report since no claim existed against the practitioner and no payment was made on his or her behalf. Although the insurance company may have named the practitioner in the release or settlement, any payment made would not be on behalf of this practitioner due to the summary judgment order.

### **Suspension - Indefinite Length**

**Example:** A practitioner disputed a report of a summary suspension of clinical privileges on the basis that the suspension was less than 30 days. The hospital reported the suspension of the practitioner's clinical privileges on the 10th day of an indefinite suspension. Attendant to the suspension was a requirement that the practitioner complete a specific course of action (a psychiatric evaluation). When that action was completed, the hospital's professional review body reinstated the practitioner's clinical privileges. The practitioner completed the required action on the 20th day of the suspension and clinical privileges were immediately restored. The suspension of the practitioner's clinical privileges did not exceed 30 days, but the hospital did not request that the report be voided from the NPDB.

**Outcome:** The Secretary directed the NPDB to void the report since the duration of the suspension of the practitioner's clinical privileges did not exceed 30 days.

**When a summary suspension is indefinite in length, it should not be reported until it has been in effect for more than 30 days.**

### **Suspension - Summary**

**Example:** A report was made to the NPDB regarding a summary suspension based on a practitioner's professional competence, which did not last more than 30 days. The hospital took no reportable action following the summary suspension. The practitioner disputed the report since the length of the suspension was less than 30 days. The practitioner resigned a year later while still under investigation by the

hospital for the same type of professional competency issue. The hospital submitted a report of the practitioner's resignation while under investigation. The practitioner disputed this report on the grounds that the same issue had previously been reported to the NPDB.

**Outcome:** The Secretary directed the NPDB to void the first report since the suspension did not exceed 30 days. The Secretary determined the second report to be correct as submitted since the resignation of the practitioner was submitted while under investigation for issues related to professional competence.

The practitioner was correct that the reason for the report was the same; however, reportability hinges not upon the nature of the problem or incident, but on the circumstances under which the report was made (the suspension versus the resignation while under investigation).

## Questions and Answers

1. **I am the executor of my wife's estate. I received notification of a report about her in the NPDB. Can I dispute the report?**

Yes. To dispute a report on your wife's behalf, you must provide documentation that you have been appointed the executor or legal representative of her estate. Acceptable documentation can be a photocopy of her will or other legal documentation showing you as the executor/legal representative.
2. **When a subject attempts to resolve a disagreement with a reporting entity, must the dispute be resolved within a certain time frame?**

No. A subject must inform the reporting entity, in writing, of the disagreement with the report and the basis for that disagreement, but there is no requirement that the dispute must be resolved within a certain amount of time.
3. **If a subject wishes to dispute a report, does the subject have to submit a statement at the time of dispute?**

No. The subject **may** provide a statement with the initiation of dispute, but is not required to do so. A Subject Statement may be submitted at any time.
4. **Must a subject initiate a dispute in order to add a statement to a report?**

No. The subject of a report may add a statement to a report independently of the dispute process.
5. **If the Secretary rules a dispute to be beyond the scope of review and places a notation to this effect in the NPDB, can the subject also add a statement?**

Yes. Subjects are notified of this option by the Secretary. A Subject Statement added to the report after dispute resolution replaces any prior Subject Statement.