


# Lifeline



## National Practitioner Data Bank: Myth vs. Reality

Myths and folklore are a treasured part of our society. They allow us to share our story, pass on traditions and impart valuable learning lessons. But when those myths are based in falsehoods, they can sometimes do more harm than good.

Take the National Practitioner Data Bank. While some dentists are familiar with it, many are unaware of exactly what it is or how it operates. And too often, the little knowledge they do have is based on myth, not reality.

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“There is a lot of false information out in the field about the National Practitioner Data Bank,” said Sheila Davis, assistant vice president, Claims and Risk Management, The Dentists Insurance Company. “We hope to clarify some of the common misperceptions so dentists have a clear understanding of its function.”

The NPDB is an online repository of information pertaining to the professional competence and conduct of dentists, physicians and other health care practitioners. It was launched in 1990 in response to increasing rates of professional liability claims and to prevent incompetent – and sometimes dangerous – practitioners from moving from state to state undetected. Operated by the U.S. Department of Health and Human Services, its overarching goal is to improve the quality of health care nationwide.

The data collected in the NPDB falls into two categories: payouts for professional liability settlements and adverse actions. Adverse actions include state licensure and certification, clinical privileges/panel membership, professional society membership, and Drug Enforcement Agency cases. It also includes the U.S. Department of Health and Human Services’ Office of the Inspector General exclusions. These are individuals and entities who are excluded from participation in state or federal health care programs due to unlawful and/or fraudulent conduct.

The information collected in the NPDB is used by authorized organizations for the purposes of employment, licensing and credentialing. The information is confidential and not available to the public; however, the subjects of the reports are permitted to access their own information.

Entities eligible to query the NPDB for data include hospitals and other health care entities, professional societies, medical and dental licensing boards, health plans, law enforcement agencies and government health care programs. Reporting agencies include health care entities, hospitals and state licensing and certification agencies. Reporting agencies also include insurance companies that make professional liability payouts, including TDIC. In order to be reportable, the claim must meet the

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following criteria:

- It must involve the exchange of money;
- It must be the result of a written complaint or claim demanding monetary payment for damages (based on the practitioner’s provision of or failure to provide health care services);

AND

- The practitioner must be named in both the complaint or claim, and the settlement release or final adjudication.

In 2015, TDIC reported a total of 151 professional liability cases that were eligible for reporting to the NPDB. The majority of these involved the failure of restorations, such as crown and bridge work. In addition, there were several cases involving failure to diagnose, which resulted in the loss of teeth and/or the need for corrective treatment. The claims that paid out \$100,000 or more generally involved nerve injury, failure of full-mouth reconstruction and failure to diagnose tumors.

Following are some common myths about the NPDB:

**Myth:** Reporting is triggered by a certain dollar amount.

**Reality:** Any payout made by an insurance carrier on a professional liability issue, irrelevant of the payment amount, is reportable under law.

However, claims paid out of pocket by individual dentists are not reportable, as long as they are drawn from the dentist’s personal account, not a corporate or business account. For this reason, some insureds opt to settle low-value claims on their own.

“We advise insureds to get all the information they can about the risks and benefits of paying claims out of pocket,” Davis said. “We can walk them through various scenarios, and they can then decide how to proceed. It is a business decision and must be carefully considered.”

Rest assured, simply contacting an insurance carrier is not grounds for reporting. The claim must come to a close, in writing, and in California, insureds must provide their written consent authorizing their carrier to settle a professional liability claim. In fact, TDIC’s policy language specifies that any professional liability payment must include the insured’s written consent.

“Our number one priority at TDIC is protecting our policyholders,” Davis said. “Requiring written consent ensures that they clearly understand the pros and cons of us making a professional liability payment on their behalf. We are always available to provide them with the information they need to make an informed decision, and we encourage them to call us with any questions they may have.”

**Myth:** Reporting is optional.

**Reality:** All eligible entities are required under law to report professional liability payouts, corrective actions, and license and certification findings. Not only is this mandatory, but eligible entities are subject to fines if they fail to report a record of action. These fines can be up to \$11,000 per occurrence.

In California, professional liability carriers, including TDIC, are required to report to their respective licensing boards, such as the Dental Board of California. Reportable actions include the following:

**Myth vs Reality** continued on page 6

A woman with dark hair, wearing a black sleeveless top, is sitting in a green office chair. She is smiling broadly and looking towards the camera. She is holding a dental instrument, possibly a scaler, in her hands. The background shows a window with a view of a cityscape.

**You are not a policy number.**



And at The Dentists Insurance Company, TDIC, we won't treat you like one. We were started by, and only protect, dentists. This singular focus has led to an unparalleled knowledge of dentistry and the best ways to protect you. This respect for your profession supports exceptional service, including an in-house claims team, razor-sharp legal team and industry-leading risk management resources.

Because with us, business is about doing what's best for you.

**Protecting dentists. It's all we do.®**

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# Caution + control: Reducing employment liability



**The combination of changing employment laws and a litigation-conscious public can be intimidating.** And, it's even more so when dental practice employees are prepared to take legal action if they feel an employer breached their rights. Our latest seminar, designed from TDIC's Employment Practice Liability (EPL) claims experience and calls to our Risk Management Advice Line, will show you how to handle employment concerns. Gain the caution and control to navigate past potential employment practice violations such as pregnancy discrimination, termination and sexual harassment.

Get expert advice while earning **C.E. credits** and a **5% Professional Liability premium discount** for two years.

**After course completion, you will better understand how to:**

- Establish effective hiring and performance review practices.
- Provide employees with a fair and rewarding work environment.
- Implement controls to prevent situations that lead to EPL claims.

\*Due to the sensitive nature of the issues being addressed and our employer-oriented approach, this course is available to dentists and their spouses only.

**Protecting dentists. It's all we do.®**

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# Fall 2016 Risk Management Seminar Schedule

## Thursday, Sept. 8

9 a.m. – noon and 2 – 5 p.m.

### CDA Presents\*\*

Moscone Center  
San Francisco, CA

## Friday, Sept. 9

9 a.m. – noon and 2 – 5 p.m.

## Friday, Sept. 30

9 a.m. – noon

### Plumpjack – North Lake Tahoe

North Lake Tahoe, CA

## Friday, Nov. 4

9 a.m. – noon

### Ala Moana Hotel

Honolulu, HI

## Friday, Dec. 9

9 a.m. – noon

### Hyatt Mission Bay – San Diego

San Diego, CA

Reserve your space today at  
[tdicinsurance.com/seminars](http://tdicinsurance.com/seminars)

Unable to attend in person? Visit [tdicinsurance.com/eLearning](http://tdicinsurance.com/eLearning) to explore convenient eLearning options.

## Fees

- Dentist: **\$50**
- Part-time\*: **\$25**
- New TDIC Policyholder: **Free** (within the first policy year)

\*Must have a TDIC part-time Professional Liability policy to be eligible for this discount.

\*\*Attendees must register through CDA for these seminars.

## C.E. Details

- **20%** – 3.0 per session

To receive C.E. credit, registrants must be present for the entirety of the three-hour seminar. This seminar meets the Dental Board of California's requirements for 3.0 C.E. credits.

## Special Needs

If you or someone in your group requires special assistance to fully participate in the seminar, please call TDIC at 800.733.0634 or email us at [risk.management@cda.org](mailto:risk.management@cda.org).

## ADA C.E.R.P.<sup>®</sup> | Continuing Education Recognition Program

The California Dental Association is an ADA CERP Recognized Provider. ADA CERP is a service of the American Dental Association to assist dental professionals in identifying quality providers of continuing dental education. ADA CERP does not approve or endorse individual seminars or instructors, nor does it imply acceptance of credit hours by boards of dentistry. CDA designates this activity for 3.0 continuing education credits. This continuing education activity has been planned and implemented in accordance with the standards of the ADA Continuing Education Recognition Program (ADA CERP) through joint efforts between CDA and TDIC.

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Also selling in Arizona and North Dakota

Professional Liability premium discount effective their next policy renewal. To obtain the two-year, 5% Professional Liability premium discount, Alaska, Hawaii, Illinois, Minnesota, New Jersey, North Dakota and Pennsylvania dentists must successfully complete the seminar by Oct. 27, 2017. Arizona, California and Nevada dentists must successfully complete the seminar by April 28, 2017. Any eLearning tests received after the deadline will not be eligible for the discount. Nonpolicyholders who complete a seminar or eLearning option and are accepted for TDIC coverage will also be eligible for this discount.

### Myth vs Reality from page 2

- Professional liability payouts
- Loss of license or certification
- Adverse clinical privileging actions
- Adverse professional society membership actions
- Negative actions or finding by licensing or certification authorities
- Negative actions or findings by federal or state licensing agencies
- Civil judgments or criminal convictions that are health-care related
- Exclusions from state or federal health care programs due to unlawful and/or fraudulent activities

“Some insureds mistakenly believe that low-value claims, say, those under \$5,000, don’t have to be reported to the NPDB. But that is simply untrue. Any claims payment that fits the parameters outlined by the NPDB as requiring a report must be reported by TDIC. Disclosure of this requirement is also included in the language of our consent to settle forms,” Davis said.

**Myth:** Information contained in the data bank is available to the public.

**Reality:** The general public cannot access the data bank. Access is only granted to designated entities, such as hospitals, health care companies, licensing boards, professional societies and those administering state or federal health care programs. All are required to meet certain guidelines and pre-register.

However, individual practitioners are allowed to conduct a self-query, and healthcare providers can obtain their own records in certain cases; for example, if litigation is filed against them.

“Although individuals named in reports are notified by the NPDB when the report is filed, we encourage insureds to conduct self-queries, so they can stay on top of the information out there,” Davis said.

**Myth:** Information in the data bank drops off after a period of time.

**Reality:** Information reported to the data bank stays in the data bank indefinitely. However, reporting entities are able to change or remove a report from the NPDB if there has been a genuine error in the reporting.

## Since its launch in 1990...

**406,282:** total number of health care practitioners reported for professional liability

**50,476:** total number of dentists reported for professional liability

**16,251:** average number of health care practitioners reported for professional liability per year

**2,019:** average number of dentists reported for professional liability per year

**12.4:** percentage of reports involving dentists

**1.1:** percentage of practicing dentists reported for professional liability each year

\*According to NPDB Research Statistics and the 2012 NPDB Annual Report.

**Myth:** Once reported to the data bank, records cannot be changed.

**Reality:** Although individuals are not allowed to change their records, the reporting agencies can. However, individuals can respond to reportable actions contained in the data bank. The NPDB will notify individuals if they are a subject of a report. The notification includes the report number, temporary password and instructions for accessing the report online.

Should the report contain incorrect information, such as misidentification, individuals must contact the reporting agency to correct the information. If individuals are not satisfied with the outcome of the report, they have two options:

**1. Enter a statement.** Subjects may add a statement at any time without necessarily disputing the report. Statements become part of the report unless the subject removes or modifies them. Statements are meant to provide additional information and

cannot contain identifying or confidential information. TDIC can help dentists craft an appropriate statement.

“We encourage dentists to contact us if they need assistance drafting a statement. There are certain guidelines to follow, and we can help ensure their statements are relevant and clear,” Davis said.

**2. Dispute a report.** Subjects can also dispute a report if they disagree with the factual accuracy of the report or if they believe the report was not submitted in accordance with NPDB reporting requirements.

Entering the report into Dispute Status does not trigger a review of the report by the NPDB. Rather, the NPDB sends a notification of dispute to the reporting entity and all entities who received the report within the last three years. In addition, the notification will be included with all future queries.

If a report is disputed, the reporting agency is notified, and the subject must attempt to resolve the dispute directly with the agency. If after 60 days, the subject is unable to resolve the dispute with the agency, he or she may elevate the report to Dispute Resolution. In Dispute Resolution, the NPDB reviews the report, in the order received, based on the following parameters:

- Whether a report was submitted in accordance with NPDB reporting requirements, including the eligibility of the reporting entity to report the information to the NPDB.
- The factual accuracy of the information.

The Dispute Resolution process does not include reviewing:

- The underlying reasons for the report, such as the merits of a professional liability claim.
- The extent to which entities followed due process procedures. These must be resolved between the subject and the reporting entity.

It should be noted that late reporting does not constitute grounds for disputing a report. Although eligible entities must report professional liability payments and other reportable actions to the NPDB within 30 calendar days, an entity’s

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failure to do so does not preclude the NPDB from collecting such a report beyond the 30-day time frame. Issues of timely reporting are handled through the NPDB's compliance program.

The NPDB is not a new system, but among health care practitioners, it does

have a certain level of mystique. By arming yourself with awareness about how it functions, it is possible to avoid the rumor mill and ensure interactions with the NPDB serve their ultimate purpose – to protect the public and improve the quality of health care nationwide.

**Test your NPDB IQ**

**1.** A dentist performs routine restorative work on a patient, including the placement of crowns. Later, the patient complains of pain and swelling. She sees another dentist, who replaces the crowns. She returns to the original practice, demanding a refund, which the dentist agrees to. He gives the patient her money back, but it was under \$5,000, out of his personal savings account. Is this transaction reportable to NPDB?

**2.** A dentist was involved in a professional liability claim stemming from an unhappy patient who was disappointed with the result of his veneers. However, prior to treatment, the dentist clearly explained the process and risks, and the patient signed an informed consent form. Although not admitting wrongdoing, the dentist agreed to refund part of the patient's cost as an act of good will. Is this transaction reportable to NPDB?

**3.** At the beginning of his career, a dentist was involved in a lawsuit

involving a patient who suffered nerve damage as a result of a dental implant. But this was more than two decades ago, and the case was settled without incident. Is this record still searchable by the public?

**4.** A periodontist received a letter in the mail indicating she was the subject of a report made to NPDB regarding a professional liability claim. The claim was settled months ago, but not reported until now. Because the reporting entity failed to report within the mandated 30-day time frame, is the periodontist's record still valid?

**5.** A dentist was sued by a patient who had problems with his bridge. Although she did not believe she was liable for the claim, she considered the costs associated with litigation and opted to settle out of court. The dentist conducted a self-query and discovered her side of the case was not presented. Because it is her own record, is she able to alter it?

**See answers below.****Answer key:**

1. NO, this transaction would not be reportable to the NPDB because the dentist paid out of his personal bank account, not his corporate account. The amount of the claim is irrelevant.

2. YES, this transaction would be reportable to NPDB, but only if the following two conditions were met: 1) the demand was in writing 2) the payment was made by a professional liability carrier on behalf of the dentist OR the payment was made by the dentist directly out of his or her corporate account.

3. NO. Members of the public are not able to search any records in the NPDB, regardless of

when the incident was reported. However, the record is still in the databank and is accessible to approved entities.

4. YES. Although submitted late, the record is still placed within the NPDB. However, the late reporting can be turned over to the NPDB's compliance unit for review and possible corrective action.

5. NO, the dentist is not able to alter her own record. She can, however, add a statement to the existing record, outlining her viewpoint and reasoning for settling.

**Question and Answer**

**Q. I want to withdraw from care of a patient of record because she is delinquent in her bill. How soon can I dismiss her?**

**A.** It depends on whether her treatment is complete. To reduce your risk of liability and to avoid a claim of abandonment, do not withdraw from care if your patient is in the middle of treatment. Once treatment is complete, any factors that you believe are compromising a successful doctor/patient relationship are sufficient grounds for dismissal. Withdraw from care by notifying the patient in writing.

Allow a reasonable amount of time for the patient to find another dentist, for example 30, 60 or 90 days. Note that the circumstances for each patient will be different depending on treatment status, ability to pay for treatment, access to care, and geographical proximity of the patient to another dentist.

In the dismissal letter, indicate the exact termination date that you will no longer be available for emergency care. Give two viable referrals, such as the local dental society or managed care plan. Enclose an authorization to release dental records form, which can be downloaded from [TDICinsurance.com](http://TDICinsurance.com), with instructions to sign and return it to the dental office.

Send the dismissal letter via both certified mail with return receipt requested and regular first-class mail to the patient's last known address on file. The patient's signed certified receipt verifies that the patient received notification. Keep this, along with a copy of the letter noting both means of delivery, in the patient's chart. If the letters get returned, keep the returned letters in the chart as well.

Contact TDIC for advice on terminating the doctor/patient relationship and to obtain a sample dismissal letter. Remember, withdrawing from care should be done in writing and only after the patient's treatment is complete to avoid claims of abandonment.



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