

person will be required to sign in and may be required to present a picture identification to gain entry to the workshops.

Dated: October 2, 1997.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 47

RIN 2900-AI78

Reporting Health Care Professionals to State Licensing Boards

AGENCY: Department of Veterans Affairs.
ACTION: Proposed rule.

SUMMARY: It continues to be the policy of the Department of Veterans Affairs (VA) to report to State Licensing Boards any separated physician, dentist, or other licensed health care professional (one who no longer is on VA rolls) whose clinical practice so significantly failed to meet generally accepted standards of clinical practice as to raise reasonable concern for the safety of patients. This document proposes that, in addition, VA would report to State Licensing Boards any currently employed physician, dentist, or other licensed health care professional (one who is on VA rolls) whose clinical practice so significantly failed to meet generally accepted standards of clinical practice during VA employment as to raise reasonable concern for the safety of patients. Some health care professionals who are VA employees also provide health care outside VA's jurisdiction. Accordingly, the reporting of currently employed licensed health care professionals who meet the standard for reporting appears to be necessary so that State Licensing Boards can take action as appropriate to protect the public. Examples of actions that meet the criteria for reporting are set forth in the text portion of this rulemaking. Also, this document proposes to clarify that to be "on VA rolls" means on VA rolls regardless of the status of the health care professional, including full-time, part-time, contract service, fee-basis, or without compensation. This would identify more clearly those health care professionals who would be subject to the reporting policy. Further, nonsubstantive changes are made for purposes of clarity.

DATES: Comments must be received on or before December 8, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AI16." All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Ruth-Ann Phelps, Ph.D., Veterans Health Administration, Patient Care Services (11B), 810 Vermont Ave., NW., Washington, DC 20420, at (202) 273-8473 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been reviewed by OMB under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The rule will affect only individuals and will not directly affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There are no applicable Catalog of Federal Domestic Assistance program numbers.

List of Subjects in 38 CFR Part 47

Health professions.

Approved: September 5, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 47 is proposed to be amended as follows:

PART 47—POLICY REGARDING REPORTING HEALTH CARE PROFESSIONALS TO STATE LICENSING BOARDS

1. The authority citation for part 47 continues to read as follows:

Authority: Pub. L. 99-166, 99 Stat. 941; 38 U.S.C. 501.

2. The part heading for part 47 is revised to read as shown above.

3. In part 47, subpart A and subpart B headings are removed.

4. In § 47.1, paragraph (a) is removed; paragraphs (b) through (h) are redesignated as paragraphs (a) through (g), respectively; new paragraphs (h) and (i) are added, and the authority citation is revised, to read as follows:

§ 47.1 Definitions.

* * * * *

(h) *Currently employed licensed health care professional* means a licensed health care professional who is on VA rolls.

(i) *On VA rolls* means on VA rolls, regardless of the status of the professional, such as full-time, part-time, contract service, fee-basis, or without compensation.

(Authority: 38 U.S.C. 501, 7401-7405; Section 204(b) of Pub. L. 99-166, 99 Stat. 952-953; Pub. L. 99-660, 100 Stat. 3743)

§ 47.2 [Removed]

5. Section 47.2 is removed.

§ 47.3 [Redesignated as § 47.2]

6. Section 47.3 is redesignated as § 47.2.

7. The newly redesignated § 47.2 is revised to read as follows:

§ 47.2 Reporting to State licensing boards.

It is the policy of VA to report to State Licensing Boards any currently employed licensed health care professional or separated licensed health care professional whose clinical practice during VA employment so significantly failed to meet generally accepted standards of clinical practice as to raise reasonable concern for the safety of patients. The following are examples of actions that meet the criteria for reporting:

(a) Significant deficiencies in clinical practice such as lack of diagnostic or treatment capability; errors in transcribing, administering or documenting medication; inability to perform clinical procedures considered basic to the performance of one's occupation; performing procedures not included in one's clinical privileges in other than emergency situations;

(b) Patient neglect or abandonment;

(c) Mental health impairment sufficient to cause the individual to behave inappropriately in the patient care environment;

(d) Physical health impairment sufficient to cause the individual to provide unsafe patient care;

(e) Substance abuse when it affects the individual's ability to perform appropriately as a health care provider or in the patient care environment;

(f) Falsification of credentials;

(g) Falsification of medical records or prescriptions;

- (h) Theft of drugs;
- (i) Inappropriate dispensing of drugs;
- (j) Unethical behavior or moral turpitude;
- (k) Mental, physical, sexual, or verbal abuse of a patient (examples of patient abuse include intentional omission of care, willful violation of a patient's privacy, willful physical injury, intimidation, harassment, or ridicule);
- and
- (l) Violation of research ethics.

(Authority: 38 U.S.C. 501, 7401-7405; Section 204(b) of Pub. L. 99-166, 99 Stat. 952-953; Pub. L. 99-660, 100 Stat. 3743)

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