Department of Veterans Affairs **VHA NOTICE 2018-05**
Veterans Health Administration
Washington, DC 20420 **February 5, 2018**

AMENDMENT TO VHA HANDBOOK 1100.18, REPORTING AND RESPONDING TO STATE LICENSING BOARDS

This Veterans Health Administration (VHA) notice notifies Department of Veterans Affairs (VA) Veterans Integrated Service Networks (VISNs) and VA medical facilities of key interim changes to the State Licensing Board (SLB) reporting process. This interim guidance will be followed with revision of VHA Handbook 1100.18, Reporting and Responding to State Licensing Boards, dated December 22, 2005, which will incorporate further changes to the process.

1. Cases are no longer deemed sensitive or non-sensitive; all cases being considered for reporting to the respective SLBs must be processed in the same manner. All completed evidence files must be reviewed by the VISN Privacy Officer to ensure compliance with the Privacy Act, utilizing guidance in Appendix A. Evidence files must be sent from the VA medical facility Director to their respective VISN Director for review, once the evidence file is complete and the Director has made the final decision to report. The evidence file must be assigned to the VISN Privacy Officer, or designee, within 2 calendar days of receipt. The review must be completed within 15 calendar days of assignment and returned to the VA medical facility Director with the completed coversheet (see Appendix B). Evidence files are no longer submitted to the Office of General Counsel (OGC) for review; VA medical facilities should consult with their District Counsel attorney throughout the process as needed. The District Counsel attorney may consult with OGC as needed for difficult cases.

2. VA medical facility Directors have ultimate authority in deciding whether to report a licensed health care professional to their respective SLB(s). The VA medical facility Directors must review the complete evidence file, including the licensed health care professional's response and rebuttal memorandum, and decide if there is supporting evidence that the licensed health care professional failed to meet the generally-accepted standards of care. The decision must be documented for the record utilizing the decision memorandum in Appendix C. The completed decision memorandum must be filed in the licensed health care professional's SLB reporting evidence file.

3. VA medical facility Directors must designate an individual, and backup, to be responsible for the SLB reporting process. This individual will be the subject matter expert (SME) for the facility who is responsible for ensuring compliance with VHA Handbook 1100.18, including the interim changes outlined in this notice, and ensure oversight of the exit review process, including receipt, review, and maintenance of the Provider Exit Review Forms (s*ee Appendix D for the Provider Exit Review Form)*. This individual is also responsible for ensuring that Provider Exit Review forms are completed within 7 calendar days of departure of any licensed health care professional and that SLB reporting is initiated when a licensed health care professional has been identified as performing substandard care. The forms may be maintained electronically in a secure, limited access location at the facility.

4. Provider Exit Review forms must be completed within 7 calendar days of the departure of a licensed health care professional from a VA facility. This includes

licensed health care professionals who had any type of VA appointment (e.g., full-time, part-time, Without Compensation/WOC) and contractors. The form should be completed by the provider's first-line supervisor, who has first-hand knowledge of the provider's practice and findings from ongoing monitoring and reviews. If there is a finding that the licensed health care professional failed to meet the generally-accepted standards of care, the form must be signed by the service chief, the service chief's supervisor (i.e., Chief of Staff, Associate Director, or Associate Director for Patient Care Services), and the VA medical facility Director. SLB reporting must be initiated in accordance with VHA Handbook 1100.18 and interim guidance outlined in this notice as soon as substandard care has been identified. The Provider Exit Review form in Appendix D must be used for this purpose.

5. The reporting process must not wait for human resource-related fair hearing processes, National Practitioner Data Bank fair hearing processes, if applicable, or contract actions unless there are rare extenuating circumstances such as an ongoing VA Office of Inspector General (OIG) criminal investigation. SLB reporting should happen concurrently with those activities.

6. SLB reporting requirements apply to licensed health care professionals who are performing clinical services through community care contracts and agreements.

7. Training and guidance on the implementation of this change will be provided in collaboration with the VHA Office of Medical Staff Affairs after publication of the revised handbook in the first quarter of 2018. Questions on this guidance should be directed to the Director, Medical Staff Affairs (10E2E), at VHA10E2actions@va.gov.

8. This VHA notice will be archived one year after the publication date. However, the amendment information will remain in effect until publication of revised VHA Directive 1100.18.

Carolyn Clancy, M.D.
Executive in Charge

GUIDELINES FOR COMPILING, ORGANIZING AND PREPARING THE STATE LICENSING BOARD REPORTING FILE AND DECISION MEMORANDUM: GUIDANCE FOR PRIVACY OFFICERS ON REPORTING FILE REVIEW

1. BACKGROUND

a. To ensure that its health care professionals meet generally-accepted professional standards for patient care, the Department of Veterans Affairs (VA) notifies State Licensing Boards (SLB), charged with licensing health care professionals, when a professional's behavior or clinical practice so substantially failed to meet generally-accepted standards of clinical practice as to raise reasonable concern for the safety of patients. ***NOTE:*** *See Veterans Health Administration (VHA) Handbook 1100.18, Reporting and Responding to State Licensing, Boards, dated December 22, 2005, or subsequent policy.*

b. A VA medical facility reports a licensed health care professional to the appropriate SLBs by submitting a Reporting File, which contains an Evidence File of documentation supporting the charges of substandard care. Records that may appear in an Evidence File include: patient medical records, including prescription and administration control records; documents of administrative boards of investigation (AIB); police reports; signed statements and reports of contact from the professional staff or patients; facility policies and procedures that identify the standards or requirements breached; and relevant health information specific to the licensed health care professional. ***NOTE:*** *See Appendix B.*

2. DISCLOSURE AUTHORITY

a. The Privacy Act permits VHA to release to an SLB the Evidence File concerning a health care professional pursuant to the professional's prior written consent or a qualifying request from the SLB (see Title 5 United States Code (U.S.C.) 552a(b)(7) – the Privacy Act). The routine use in the Patient Medical Records/VA system of records (24VA10P2) regarding disclosures does not provide authority for the disclosure of the Evidence File. Under the routine use, VA may alert a SLB of incidents suggesting substandard care, without naming the licensed health care professional, and indicate that the Evidence File may be provided pursuant to a qualifying law enforcement request. The release of any more information, including the Evidence File, must be authorized by either a written consent of the professional or a law enforcement request that qualifies under section (b)(7) of the Privacy Act. ***NOTE:*** *For a sample letter that meets the requirements for a proper law enforcement request, see Appendix K, in VHA Handbook 1100.18.*

b. To the extent that the Evidence File contains individually-identifiable health information, the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule authorizes VHA to disclose such materials in conducting its health care operations. The definition of health care operations includes the review of the competence or qualifications of a health care professional, as well as accreditation, certification, licensing, and credentialing activities. Accordingly, VHA may provide the SLB with an

Evidence File that contains individually-identifiable health information to conduct its health care operations (see Title 45 Code of Federal Regulations (CFR) 164.501, and 164.506(c)(1)).

3. CATEGORIES OF RECORDS AND INFORMATION

a. Individual Identifiers. Information that identifies individual patients, including names, addresses, and social security numbers, must be redacted from all documents. Names of VA employees may generally remain in the Evidence File, although their home addresses, telephone numbers, and Social Security Numbers must be redacted. To assist the reviewer where more than one patient is involved, individual identifiers may be replaced anonymous patient identifiers, such as Patient W. ***NOTE:*** *See VHA Handbook 1100.18.*

b. Title 38 U.S.C. 5705 Records (Medical quality assurance (QA) materials). Medical QA materials, such as monitoring and evaluation reviews and focused reviews, are confidential and privileged and may not be placed in an Evidence File (see 38 U.S.C. 5705(a), 38 CFR 17.501, VHA Handbook 1100.18, par. 13b(5), and App. B, par. 2b(4)). If a document has been identified as quality assurance material, consult the facility's quality assurance plan to confirm. If a document that does not qualify as medical quality assurance material is erroneously designated as a 5705 document and included in an Evidence File, the error needs to be corrected by redacting the statement identifying the record as medical quality assurance material.

c. Title 38 U.S.C. 7332 Records and Similar Documents (that reveal the identity, diagnosis, prognosis, or treatment of individuals for drug abuse, alcoholism, Human Immunodeficiency Virus (HIV), or sickle cell anemia). Records that reveal the identity, diagnosis, prognosis, or treatment of individuals for drug abuse, alcoholism, HIV, or sickle cell anemia may not be included in an Evidence File (see 38 U.S.C. 7332(a); 42 U.S.C. 290dd-2(a); 38 CFR 1.461). If such materials appear necessary to report (i.e., the file would lack sufficient evidence without such documents), the information must be made anonymous by redacting individual identifiers. To assist the reviewer where more than one patient is involved, individual identifiers may be replaced with anonymous patient identifiers, such as Patient W (see App. B, par. 2b(1)).

d. Employee Drugs Testing or Drug and Alcohol Abuse Records. Records that contain the results of an employee's drug test or employee records maintained in connection with drug and alcohol abuse prevention, treatment, and rehabilitation programs and services provided pursuant to 5 U.S.C. 7361(b), and 7362(b) may not be included in an Evidence File. If such materials appear necessary to report (i.e., the file would lack sufficient evidence without such documents), the information must be made anonymous by redacting individual identifiers*. If it is not possible to both remove this information and redact individual identifiers (e.g., the positive drug test results of a professional being reported for theft of narcotic medication), contact the VHA Privacy Officer for guidance.*

SAMPLE REPORTING FILE REVIEW MEMORANDUM FROM PRIVACY OFFICER

Privacy Officer, VA MEDICAL FACILITY

Disclosure to State Licensing Board [NAME OF PROFESSIONAL]

Director, [VA MEDICAL FACILITY]

Date:

1. The Evidence File associated with the proposal to report [NAME] to the appropriate State Licensing Board (SLB) has been reviewed for compliance with applicable legal authorities.

2. In accordance with VHA Handbook 1100.18, the following actions have been taken to complete the preparation of the Evidence File for submission to the SLB(s): (check any or all)

   [ ] a. Patient identifiers (e.g., names, social security numbers, and home addresses) have been redacted from [IDENTIFY DOCUMENTS] at [Tab(s)]. VHA Handbook 1100.18, App. B, para. 2b(1).

   [ ] b. Records not authorized for release (e.g., medical quality assurance materials confidential and privileged under Title 38 United States Code (U.S.C.) 5705) have been removed from [Tab(s)]. VHA Handbook 1100.18.

   [ ] c. Documents that reveal the identity, diagnosis, prognosis, or treatment of individuals for drug abuse, alcoholism, HIV, or sickle cell anemia under 38 U.S.C. 7332 have been removed from [Tab(s)]. VHA Handbook 1100.18.

   [ ] d. Employee records related to drug test results or education, training, treatment, rehabilitation, or research for drug or alcohol abuse have been removed from [Tab(s)]. VHA Handbook 1100.18.

   [ ] e. Information that pertains to another professional that is not relevant and material to the proposed reporting has been redacted or removed from [IDENTIFY DOCUMENTS] at [Tab(s)]. VHA Handbook 1100.18.

   [ ] f. Other

3. The Reporting File may be released to an SLB pursuant to either [PROVIDER'S NAME]'s prior written consent or a qualifying law enforcement request from the SLB(s) that meets the requirements described at Appendices J and K of VHA Handbook 1100.18.

SAMPLE DECISION MEMORANDUM FROM VA MEDICAL CENTER DIRECTOR (00)

(Date)

From: Director

To: For the Record

Subj: Disclosure to SLB

Name: John Doe, M.D.

Date of Birth: 10/4/36

Occupation: Physician

Last 4 of SSN: XXX-XX-0000

Last Known Address:

Licensure: New York #00000

Maine #0000

In accordance with the authority contained in Title 38 United States Code, Sections 501, 7401-7405 and the implementing policy, VHA Handbook 1100.18, I have decided, based upon a careful review of the attached State Licensing Board (SLB) Reporting File, that:

____There is substantial evidence to make a report to the <insert relevant state(s)> SLB regarding John Doe, M.D. In accordance with Title 38 United States Code, Sections 501, 7401-7405 and the implementing policy, VHA Handbook 1100.18, the file is submitted for your review to determine if requirements of the Privacy Act and other information disclosure laws have been met so that I can report that:

> <*John Doe, M.D*.>, so substantially failed to meet generally-accepted standards of clinical practice as to raise reasonable concern for the safety of patients, when during his clinical performance as a <*general staff surgeon, he made multiple diagnostic and treatment errors*>.

____ There is NOT substantial evidence to make a report to the SLB regarding John Doe, M.D.

(Signature)

VA Medical Facility Director

PROVIDER EXIT REVIEW

This document is to be used by the first or second line supervisor at the time a licensed health care professional departs the facility. This will serve as documentation of the initial review in accordance with VHA Handbook 1100.18, Reporting and Responding to State Licensing Boards. This is to be completed for any licensed health care professional who has been credentialed and appointed including but not limited to full-time, part-time intermittent, volunteer, and contract staff. This requirement applies to ALL licensed health care professionals, e.g., physicians, registered nurses, social workers, psychologists, dentists, etc.

Complete and return this form to _____ within 7 days of provider leaving this facility. A copy is to be maintained at the facility and a copy scanned into the provider's electronic credentialing file on the Personal Profile screen before inactivating the file.

Provider's Name: _____Service: _____

Date of Clearance from Facility: _____

Reason: Resigned/ Retired _____

Transferred to another VA Facility: _____

Resigned while under Investigation _____

Terminated/ Removed for Clinical Care Concerns _____

Terminated for Conduct/ Administrative/ Professionalism Issues _____

Contract Ended _____

Other _____

Care provided by this licensed health care professional: **(CHECK ONE ITEM BELOW)**

_____ **Met** generally-accepted standards of clinical practice, and there was no concern for the safety of patients. (The level of ability and practice expected of competent professional, as well as the moral and ethical behavior necessary to carry out those responsibilities.) SLB reporting is not indicated.

_____ **Met** generally-accepted standards of clinical practice; however, if asked for recommendation, I would recommend proctoring related to _____. SLB reporting is not indicated.

_____**Met** generally-accepted standard of clinical practice, however, there is documented record and evidence of personnel actions taken due to:

_____Conduct Issues

_____Professionalism Issues

_____Administrative Issues

_____Other: _____

_____ **Failed to meet** generally-accepted standards of practice as to raise reasonable concern for the safety of patients. (When, given all the circumstances, a reasonable person would be concerned for the safety of patients treated by the licensed health care professional.) **SLB reporting IS indicated and is to be immediately initiated/ has been initiated**. *If this is selected, there must be documented, substantial evidence of provider failing to meet standard of care*.

NOTE: If selected, this form must be signed by service chief, respective "quad member" and Director.

The following are examples of substandard actions that could provide basis for reasonable concern for the safety of patients, and thus would warrant a **COMPREHENSIVE REVIEW** for the potential reporting in accordance with VHA Handbook 1100.18, Reporting and Responding to State Licensing Boards:

1) Significant deficiencies in clinical practice; for example, lack of diagnostic or treatment capability; multiple errors in transcribing, administering or documenting medications; inability to perform clinical procedures considered basic to the performance of one's occupation; or performing procedures not included in one's clinical privileges in other than emergency situations;

2) Patient neglect or abandonment;

3) Mental health impairment sufficient to cause the individual to make judgment errors affecting patient safety, to behave inappropriately in the patient care environment, or to provide unsafe patient care;

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

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

6) Falsification of credentials;

7) Falsification of medical records or prescriptions;

8) Theft of drugs;

9) Inappropriate dispending of drugs;

10) Unethical behavior or moral turpitude (such as sexual misconduct toward any patient involved in VA health care);

11) Patient abuse, including mental, physical, sexual, and verbal abuse, and including any action or behavior that conflicts with a patient's rights; intentional omission of care; willful violations of a patient's privacy; willful physical injury or intimidation, harassment or ridicule of a patient; or

12) Falsification of research findings, regardless of where the research was carried out or the funding source, as long as involved in some aspect of operations of the VA.

_____ _____

FIRST OR SECOND LINE SUPERVISOR SIGNATURE **DATE**

If "failed to meet" was selected, form must also be signed by the service chief, respective "quad" member, and Director

Service Chief: _____

COS/ AD/ ADPCS: _____

Director: _____

COMMENTS: