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BULLETIN NO. 08-17

**TO: ALL INSURERS AUTHORIZED OR ADMITTED TO TRANSACT
MEDICAL MALPRACTICE LIABILITY INSURANCE IN THIS STATE**

FROM: STEVEN M. GOLDMAN, COMMISSIONER

**RE: REPORTING OF CERTAIN CLAIMS UNDER HIGH/LOW
AGREEMENTS**

N.J.S.A. 17:30D-17a provides that any insurer or insurance association authorized to issue medical malpractice liability insurance in this State shall notify the Medical Practitioner Review Panel ("Review Panel") established pursuant to N.J.S.A. 45:9-19.8 in writing of any medical malpractice claim settlement, judgment or arbitration award involving any practitioner licensed by the State Board of Medical Examiners ("BME") and insured by the insurer or the insurance association. The Department of Banking and Insurance ("Department") adopted rules to implement this statute at N.J.A.C. 11:1-7. In addition, these rules require that insurers report to the Department information regarding claims payments that excludes identifying information on the practitioner or claimant.

The Department has received several inquiries from insurers as to whether payments made pursuant to a "high/low agreement" must be reported to the Review Panel pursuant to the afore-referenced statute and rules where a verdict in a civil action is rendered in favor of the defendant provider. High/low agreements provide for a minimum or maximum payment irrespective of the verdict and the amount of damages, if any, awarded in such an action. Thus, a high/low agreement provides for a specified payment where there is a finding or verdict of no liability on the part of the defendant practitioner. Payments under these circumstances are not required to be reported to the Federal National Practitioner Data Bank under applicable Federal rules. The BME has similarly determined that under such circumstances such payments should not be reported to the Review Panel (and therefore not posted on the Physician Profile maintained by the Board) as these payments are not the type of payments that N.J.S.A. 45:9-19.8 was intended to address.

Accordingly, this Bulletin is to advise insurers that the Department intends to propose amendments to N.J.A.C. 11:1-7(a) to provide that payments made pursuant to a high/low agreement where there is a finding or verdict of no liability on the part of the defendant practitioner are not required to be reported to the Review Panel. In addition, pending the adoption of the proposed amendment, the Department will not take any enforcement action for the non-reporting of these types of payments to the Review Panel.

N.J.A.C. 11:1-7.3(g), which requires the reporting of claim payment information to the Department, will not be changed. Accordingly, pursuant to that rule insurers should continue to report to the Department all claims payments, including those made pursuant to high/low agreements where a verdict is returned in favor of the practitioner-defendant.

10/28/08
Date

/s/ Steven M. Goldman
Steven M. Goldman
Commissioner

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