

04.26.25 POLICY PROPOSAL 1

Title: National Practitioner Data Bank (NPDB) reporting without due process

Full Name*

Marion R. McMillan MD

Designation*

Physician

Are you submitting on behalf of a county medical society, specialty society, or other member?

No

If YES, please indicate the name of the county medical society, specialty society, or other member(s) for which you represent.

(If NO, you may skip.)

Submission / Idea*

SCMA MUST lobby the legislature to prohibit professional liability carriers from reporting settlement payments to the NPDB for lawsuit "settlements" made without the consent of the defendant insured physician.

Evidence / Support for Proposal*

The South Carolina Medical Management Association (the SCMMA, formerly known as the JUA), functions under the authority of the SC legislature as affirmed and codified in Title 38 of the SC Code. Currently, the SCMMA only offers SC physicians liability policies that DO NOT require physician consent to settle liability lawsuits. The current practice is to give the SCMMA the unfettered right to settle liability lawsuits if the cost of defending the lawsuit is greater than the cost of a settlement with or without the consent of the physician. It matters not that the facts of any given case may favor the physician and be winnable in court, or that the physician demands his or her day in court and the right to trial by jury; only that the cost of defense exceeds the cost of settlement. As a result, if a settlement payment is made in the name of the physician a report of a settlement payment is made to the NPDB. While SCMMA and the NPDB claim otherwise, most credentialing bodies consider an NPDB report as an adverse action with actual or potential adverse effects on the physician, with no right to sue or to due process. The right to trial by a "jury of your peers" is enshrined in the SC and US Constitutions as the right of every citizen. To my knowledge, the SCMMA is the only liability carrier in the state that denies the option of requiring physician consent to settle

a professional liability lawsuit, and it is enabled and empowered by, and subject to the jurisdiction of our SC legislature.

Requested Action: What action is required to achieve this idea?

*(i.e. Enact legislation, have a state agency review an issue, enact an SCMA policy statement on a topic, or other action?)**

Amend Title 38 to require liability carriers to obtain physician consent to settle professional liability lawsuits, and prohibit payment of a liability settlement in the name of an insured physician if the physician does not consent to the settlement, and/or is denied the right to a jury trial. If a settlement payment is agreed to by the physician, or if the payment is the result of a jury verdict, the payment may be reported to the NPDB in the name of the physician.

Why is the Requested Action important?*

To prevent an adverse action report to the NPDB in the name of a physician without physician consent or providing due process and the right to trial by jury to the physician.

If there are additional details not addressed above that you would like to share, please provide them here.

(If you feel that the above information is sufficient, you may skip.)