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To: LRC Committee Members

Date: March 23, 2018

From: Jessica Sieferman
Executive Officer

Telephone: (916) 575-7184

Subject: Agenda Item 6 - Update, Discussion and Possible Action Regarding Proposed Regulation to Define a “Complete Report” Referenced in Business and Professions Code § 801; Potential Recommendations to Full Board

During the previous meeting, the LRC and the Board directed staff to move forward with proposed language (Attachment 1) amending BPC § [801](#) to include specific requirements when reporting settlements. However, given the likely controversy surrounding that section and impact to other healing arts boards, the language was not included in the omnibus bill.

Rather than wait for potential legislative changes next session, staff recommends defining a “complete report” through regulation and incorporate the report by reference.

The Board’s current settlement form is available to licensees on our website [here](#) (Attachment 2). However, there is no regulation mandating the form or requested information. The form also does not request any supporting documentation (e.g., copy of the settlement, depositions, etc.). Due to the lack of information received on the report, the enforcement unit spends a significant amount of time trying to obtain supporting documents for a subject matter expert to review.

Currently, physician and surgeons are required to include copies of the report, records, and depositions. The Medical Board of California’s report form is available on their website [here](#). It is a secured pdf document and cannot be combined with the meeting materials.

Requested Action:

Please consider the information provided and discuss what information and supporting information should be required for a “complete report.” If a consensus is reached, please direct staff and legal counsel to draft regulations reflecting the LRC’s recommended requirements for Board consideration at the April meeting.

BPC § 801.

(a) (1) Except as provided in Section 801.01 and subdivisions (b), (c), and (d) of this section, every insurer providing professional liability insurance to a person who holds a license, certificate, or similar authority from or under any agency specified in subdivision (a) of Section 800 shall send a complete report to that agency as to any settlement **or** arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto **or** within 30 days after service of the arbitration award on the parties.

(2) Any agency specified in subdivision (a) of Section 800 may develop a prescribed form for the report.

(3) The report shall be deemed complete only if the insurer providing professional liability insurance to the licensee includes the following information:

(A) The name and last known business and residential addresses of every plaintiff or claimant involved in the matter, whether the person received an award under the settlement or arbitration.

(B) The name and last known business and residential addresses of every licensee who was alleged to have acted improperly, whether that person was a named defendant in the action and whether that person was required to pay any damages pursuant to the settlement or arbitration award.

(C) The name, address, and principal place of business of every insurer providing professional liability insurance to any person described in subparagraph (B), and the insured's policy number.

(D) The name of the court in which the action or any part of the action was filed, and the date of filing and case number of each action.

(E) A description or summary of the facts of each claim, charge, or allegation, including the date of occurrence and the licensee's role in the care or professional services provided to the patient with respect to those services at issue in the claim or action.

(F) The name and last known business address of each attorney who represented a party in the settlement, arbitration, or civil action, including the name of the client he or she represented.

(G) The amount of the arbitration award, the date of its service on the parties, and a copy of the award document; or the amount of the settlement and the date it was reduced to writing and signed by all parties. If an otherwise reportable settlement is entered into after a reportable arbitration award is issued, the report shall include both the settlement and a copy of the award.

(H) Any other information the agency may, by regulation, require.

(b) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980), Chapter 14 (commencing with Section 4990), or Chapter 16 (commencing with Section 4999.10) shall send a complete report to the Board of Behavioral Sciences as to any settlement or arbitration award over ten thousand dollars

(\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(c) Every insurer providing professional liability insurance to a dentist licensed pursuant to Chapter 4 (commencing with Section 1600) shall send a complete report to the Dental Board of California as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(d) Every insurer providing liability insurance to a veterinarian licensed pursuant to Chapter 11 (commencing with Section 4800) shall send a complete report to the Veterinary Medical Board of any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional service. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(e) The insurer shall notify the claimant, or if the claimant is represented by counsel, the insurer shall notify the claimant's attorney, that the report required by subdivision (a), (b), or (c) has been sent to the agency. If the attorney has not received this notice within 45 days after the settlement was reduced to writing and signed by all of the parties, the arbitration award was served on the parties, or the date of entry of the civil judgment, the attorney shall make the report to the agency.

(f) Notwithstanding any other provision of law, no insurer shall enter into a settlement without the written consent of the insured, except that this prohibition shall not void any settlement entered into without that written consent. The requirement of written consent shall only be waived by both the insured and the insurer. This section shall only apply to a settlement on a policy of insurance executed or renewed on or after January 1, 1971.



Board of Optometry
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REPORT OF SETTLEMENT, JUDGEMENT OR ARBITRATION AWARD
Required pursuant to Business & Professions Code Sections 801, 801.1, 802 and 803.2

INSURER/PUBLIC ENTITY

1. Name _____	2. Telephone _____
3. Address _____	

OPTOMETRIST/PROVIDER

4. Name _____	5. License Number _____
6. Address(es) _____	
7. Policy Number _____	
8. Counsel's Name _____	9. Counsel's Telephone _____
10. Address _____	

NOTE: On reverse, enter full name(s) of other optometrists or eye care providers who were claimed or alleged to have acted improperly, whether or not such persons were named as defendants, or whether or not any recovery or judgement was against such persons. If any monies were paid on behalf of those listed, please indicate the amount.

PLAINTIFF/CLAIMANT

11. Name _____	
12. Address(es)	
Business _____	
Residence _____	
13. Incident Date _____	14. Patient Name _____
15. Patient Date of Birth _____	16. Counsel's Name _____
17. Counsel's Telephone Number _____	
18. Address _____	

NOTE: Enter on reverse, a description or summary of the facts upon which each claim, charge or judgement rested including date of occurrence. Explain specifically whether death or personal injury occurred as a result of the negligence, error or omission in practice, or rendering of unauthorized professional services by the insured. Attach additional sheets as necessary. Photocopies of any pertinent documents which contain this information may be attached instead.

19. Case Resulted in: (Check one) <input type="radio"/> Settlement <input type="radio"/> Judgement <input type="radio"/> Arbitration Award	20. Date Resolved:
21. Total Amount of Award:	22. Total Paid on Behalf of Optometrist:
23. Name and Location of Court/Arbitrator:	24. Filing Date:
	25. Docket Number:

I certify under penalty of perjury under the laws of the State of California that to the best of my knowledge the information provided within this report and any attachments is true and correct.

Signature of Responsible Agent or Insurer	Name and Title (Printed or Typed)	Date
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