# Licensed to Steal:
# Action and Inaction by State Medical Boards

## Report of the Medical Provider Study Task Force
## Coalition Against Insurance Fraud
**October, 1998**

## Executive Summary

In the years since its inception in 1993, the coalition has heard a large amount of anecdotal evidence to suggest that many state licensing boards do not adequately discipline medical providers who are convicted of insurance fraud. In many states, it's believed, the boards may lack the willingness, capability or the authority to deal with convicted medical providers. An objective study of state board actions would assist legislatures in considering the coalition's model insurance fraud act, which includes a provision requiring licensing authorities to act upon a felony conviction of insurance fraud.

Therefore, the coalition's Public Information Committee charged a task force to examine records of medical providers convicted of felony charges related to insurance fraud and compare those individuals with adverse licensing actions taken by state medical boards.

The study was complicated by the fact that there is no access to a central database of state or federal conviction records. After consultation with industry experts and the coalition's own database of fraud cases involving medical providers, the task force decided to take a snapshot of 12 states.

The study examined the records of medical providers—those who are licensed practitioners of some form of medicine—over a three-year period, 1993-95, in California, Florida, Illinois, Indiana, Massachusetts, Minnesota, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Texas. The time period was chosen to provide an adequate number of cases to review and to ensure that any criminal appeals processes had been completed. The time period also allowed for the often time-consuming process of investigation and peer review by medical boards and any appeals of those decisions.

## Legal Research

The task force also decided to commission a legal review of the boards' statutory authority to take action in these cases. The task force found that every targeted state had some provision or provisions allowing for discipline in cases of broad crimes involving theft or dishonesty. These provisions generally permit the state's licensing boards (or appropriate state agency) to take action in cases of insurance fraud committed by one of its licensees. In addition, court cases relevant to these actions have generally held that crimes of theft or dishonesty, including insurance fraud, are related to the practice of the profession and therefore within the authority of the board.

However, in some states separate medical boards are empowered under separate statutes. These statutes are not always consistent in their definitions of which actions that are punishable. This may lead to some confusion concerning what constitutes a punishable offense.

The task force also looked for provisions that require some authority or department to report the adjudication to the appropriate licensing board. Eleven of the 12 states have statutes or regulations that require an authority, usually the prosecutor's office or the clerk of courts, to report charges and/or convictions to the board.

## Methodology

It would be hard to over-exaggerate the difficulties the coalition encountered when it began to collect lists of providers for the initial database. While organizations such as The Federation of State Medical Boards (as well as several commercial databases) maintain a central depository for board actions, there is no similar clearing house for court actions.

The task force then decided that for the purposes of this project, a snapshot of each state would provide some illumination of the relationship between convictions and board actions. A provider would be considered to have committed insurance fraud if they had been convicted in a court of law of a felony charge related to insurance fraud (and that conviction had not been overturned on appeal), or had been excluded from participation in public health programs such as Medicare and Medicaid through the Department of Health and Human Services.

Press releases and other media articles, such as newspaper and journal articles, that had been collected by the coalition since its inception in 1993, or that were posted on the Internet, were used to gather provider names that could potentially be included in the database. Additional information was gathered from the Department of Health and Human Services list of sanctioned Medicaid providers, which is now available on the Internet. Several organizations, such as state attorneys general, state medical boards, the American Medical Association, and district attorneys' offices, also were contacted for help in developing the database, and other searches were performed on the Internet to locate any other sites that would be helpful in locating offenders that were convicted of insurance fraud.

Once the list was compiled, it was sorted by state and the names sent to the appropriate state licensing board for comparison to their records. If action had been taken, it was noted in the database. If no information was provided by the board, the task force decided to double-check that name against one of the large central databases.

Fortunately for the average consumer, computer technology and the World Wide Web have evolved to the point that it is economical for commercial data-gathering companies to make their services available and affordable to the general public. Typically, these companies gather information from a variety of sources and compile it into one database. The task force selected MediNet for this project.

## Findings

The coalition compiled a list of 251 providers in the 12 selected states that met the criteria for comparison purposes. The categories for adverse board actions that could have been taken

against those providers include: Warning, Censure, License Suspension, License Revocation, and Other. “Other” included voluntary surrender of license, fines, probation, reprimand or additional action, typically some restrictions on future practice. The final category is No Action Found.

| Action | Number of Providers | Percent of Total |
|---|---|---|
| Warning | 11 | 7.3 |
| Censure | 0 | 0 |
| License suspension | 21 | 8.4 |
| License revocation | 33 | 13.1 |
| Other | 42 | 16.7 |
| No Action Found | 144 | 57.4 |

In the “Other” category, there were 13 cases of voluntary license surrender, 14 cases in which fines were levied, 15 cases of probation, 5 reprimands and 6 cases that involved additional actions such as restrictions on the provider’s practice. The numbers add up to more than 39 cases because some providers had multiple actions taken against them, such as a fine *and* probation.

Of the 251 cases, 46 practitioners (18.3 percent) no longer had licenses to practice as a result of committing fraud.

## Conclusion and Recommendations

This study appears to support the anecdotal evidence: licensing boards often fail to take any actions against those licensees who commit felony offenses related to insurance fraud. While the reasons for this needs further study, there are ways that states could encourage action.

- Clarify and standardize the types of offenses that would qualify for action by a licensing board. The variations in current statutes could be leading to confusion and misunderstandings.

- Strengthen state requirements for reporting convictions to the appropriate board by enacting legislation that covers offenses committed by all types of medical practitioners.

- Ensure that clear and adequate lines of communication (computerized when possible) exist between those required to report the offenses and the appropriate licensing entity.

- Enact provisions similar to the coalition’s model law that would require a licensing board to take action in these cases. Failure to do so will continue to leave boards open to accusations that they are “protecting their own,” whether or not that is the case.

- Ensure that licensing boards have adequate resources to do the job they are expected to do.

White collar crimes such as insurance fraud tend to be low-risk, high-reward crimes. Too many medical providers perceive there’s little risk that they will be denied the opportunity to continue to practice their profession, in the course of which they have breached a public trust. Remedying this situation could go a long way toward reducing the high cost of insurance fraud to society.

## Report of the Medical Provider Study Task Force
## Coalition Against Insurance Fraud

October, 1998

### Introduction

By any measure, health care fraud[1] is an enormous problem in this country. The Coalition Against Insurance Fraud conservatively estimates that this form of fraud cost Americans nearly $60 billion annually. Other sources put the cost at $100 billion or higher, and rising.

While state governments have increased their scrutiny of state licensing of medical providers in recent years, and admirably so, the question remains: How effective is the system in ensuring that crooked providers are deprived of the opportunity to continue to steal from public and private health insurance programs? One way of ensuring this goal is for the licensing boards governing the profession to take disciplinary action, including license revocation when a provider is adjudicated to have committed insurance fraud.

In the years since its inception in 1993, the coalition has heard a large amount of anecdotal evidence to suggest that many state licensing boards do not adequately discipline medical providers who are convicted of insurance fraud. In one particularly notorious case in Pennsylvania, Dr. Richard Kones was convicted six times for financial fraud schemes totaling millions of dollars before his license was revoked.

In many states, it's believed, the boards may lack the willingness, capability or the authority to deal with convicted medical providers. An objective study of state board actions would assist legislatures in considering the coalition's model insurance fraud act, which includes a provision requiring licensing authorities to act upon a felony conviction of insurance fraud (see Appendix A).

Therefore, the coalition's Public Information Committee charged a task force to examine records of medical providers convicted of felony charges related to insurance fraud and compare those individuals with adverse licensing actions taken by state medical boards (see Appendix B for a list of committee and task force members).

The study was complicated by the fact that there is no access to a central database of state or federal conviction records. Consultations with experts including academic researchers and private investigators indicated that compiling all relevant legal action would entail the physical examination of the files in each county where the conviction occurred. After consultation with industry experts and the coalition's own database of fraud cases involving medical providers, the task force decided to take a snapshot of 12 states. Those states were selected to provide a cross section of the country and a balance between states that are and are not aggressive in pursuing

[1] For purposes of this study, the coalition defines health care fraud to include fraud committed in workers compensation programs and committed against auto bodily injury coverage, which would push the $60 billion number even higher.

this form of fraud. Further, the selection included states which have laws of varying strength to allow prosecutors to pursue fraud cases.

The study examined the records of medical providers—those who are licensed practitioners of some form of medicine—over a three-year period, 1993-95, in California, Florida, Illinois, Indiana, Massachusetts, Minnesota, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Texas. The time period was chosen to provide an adequate number of cases to review and to ensure that any criminal appeals processes had been completed. The time period also allowed for the often time-consuming process of investigation and peer review by medical boards and any appeals of those decisions. The task force also decided to commission a legal review of the boards' statutory authority to take action in these cases.

## Review of Legal Research of Codes Governing Boards of Medical Providers in Targeted States

### Summary

The task force found that every targeted state had some provision or provisions allowing for discipline in cases of broad crimes involving theft or dishonesty. These provisions generally permit the state's licensing boards (or appropriate state agency) to take action in cases of insurance fraud committed by one of its licensees. In some states, such as California, insurance fraud is specifically mentioned as a crime covered by the provisions. In addition, court cases relevant to these actions have generally held that crimes of theft or dishonesty, including insurance fraud, are related to the practice of the profession and therefore within the authority of the board.

However, in some states such as Illinois, Indiana and Pennsylvania, separate medical boards are empowered under separate statutes. These statutes are not always consistent in their definitions of which actions that are punishable; provisions governing one profession, such as physical therapists, may be more lenient and/or more ambiguous than provisions governing dentists or physicians. This may lead to some confusion concerning what constitutes a punishable offense.

In addition, the task force looked for provisions that require some authority or department to report the adjudication to the appropriate licensing board. Eleven of the 12 states have statutes or regulations that require an authority, usually the prosecutor's office or the clerk of courts, to report charges and/or convictions to the board. With one exception, there are no penalties for failing to report. Massachusetts may sanction the clerk of courts for failure to report by imposing a fine of not less that $1 and not more than $10.

## Review of the States

### California

Licensing boards may suspend or revoke a license upon conviction of a crime "substantially related to the qualifications, functions, or duties of the business or profession." The law covers pleas or verdicts of guilty as well as *nolo contendre* pleas. The board may inquire into the circumstances of the crime to determine appropriate action. Action may be taken after deadlines

for any appeals have passed, or upon affirmation of the conviction by an appeals courts, or upon the granting of probation suspending sentence (regardless of subsequent orders).

Insurance fraud committed by health care professionals is specifically mentioned as cause for disciplinary action under both the business and professional code and the insurance code.

Licensing boards for medical professionals are required to create and maintain a central listing of each licensee who is convicted of a crime "in this or any other state," pursuant to reporting requirements. The public may report complaints to the board and the board must provide a form for this purpose. However, if the board fails to act on a complaint within five years, the file is purged. Purged complaints, including those found to be without merit, may be kept in a separate file.

*Court Decisions*
A court decision ruled that a physician guilty of tax evasion was in turn guilty of moral turpitude and that it was substantially related to his qualifications to practice.

Another decision held that waiver of co-payments does not violate laws against misrepresentation and fraud.

*Reporting Requirements*
The prosecuting attorney must report the filing of a felony charge against a practitioner within 48 hours of a filing. This statute says the clerk of the court must file notification of a conviction within 48 hours.

Another statute requires the clerk of the court to report the result to the appropriate board within 10 days of adjudication

State law requires the insurance commissioner, once satisfied that "fraud, deceit or intentional misrepresentation of any kind has been committed in the submission of a claim," to file a report with the appropriate board.

## Florida

Boards, or the appropriate department when there is no board, may discipline practitioners found making fraudulent representations related to the practice of the profession; found guilty (whether through a plea, a verdict or *nolo contendre* plea) of a crime in any jurisdiction relating to the practice of the profession; making or filing knowingly false reports; or making "deceptive, fraudulent or untrue representations" or "employing a trick or scheme" in or related to the practice.

Penalties include suspension or revocation of licenses, which may be reinstated upon reapplication. The board or department may also assess costs related to the investigation and prosecution (with the exception of the attorney's time) of a violation. The state recently enacted a provision that allows for emergency suspension of a medical providers license prior to adjudication.

Other statutes cover specific professions and detailing actions for which they may be disciplined, but contain much the same language related to fraud.

*Court Decisions*
A court ruled that a physician's alleged acceptance of kickbacks from a hospital did not constitute "unprofessional conduct."

Another court ruled that a doctor who entered a *nolo contendre* plea to insurance fraud charges could presume that plea as evidence of a conviction, but must allow the doctor to rebut the presumption and attempt to convince the board he was not guilty.

Another court ruled that making false statements on a application for a license was grounds for denying that license.

## Illinois

Most practitioners are governed by specific provisions related to the profession, such as dentistry, nursing, podiatry, medicine, clinical psychology, etc. A felony or misdemeanor conviction in any state is grounds for discipline, including suspension or revocation of a license. The action may be taken by the appropriate state department or by the Medical Disciplinary Board.

Most of the acts define "dishonorable, unethical or unprofessional conduct likely to deceive, defraud or harm the public" as grounds for disciplinary action. In addition, provisions covering several professions specify making false records or reports, obtaining anything of value by fraudulent representation, overcharging or filing false statements for fee collection, and similar acts as grounds for action.

*Court Decisions*
A court ruled improper conduct that was a specific violation of the Dental Practices Act, such as insurance fraud, need not be accompanied by criminality, venality or moral turpitude to be grounds for license revocation.

A court ruled that the legislative intent was that some willful or intentional act must be committed, including unlawful concealment of a conviction related to a violation of some of the causes laid down for license revocation, during the application for a license.

*Reporting Requirements*
State's attorneys must report to the Medical Disciplinary Board any felony convictions within 60 days. All state agencies must report any possible violations of the medical practice act, also within 60 days.

## Indiana

The state code defines 19 health profession boards. All may revoke or suspend a license on grounds of fraud or material deception, conviction of a crime that has a direct bearing of the ability to practice competently, or a knowing violation of any state or federal rule regulating the profession.

## Massachusetts

The provisions governing public health allow a board, by a majority vote, to discipline a practitioner by suspending, revoking, or canceling any license or authority to practice. Conditions under which this action may be taken include deceit or "any offense against the laws of the commonwealth relating thereto."

Boards are also governed by separate provisions that in some cases expand this power to include cases of moral turpitude, unethical or unprofessional conduct, or, in the case of medicine and psychology, violation of any state law relating to practice or conviction of a crime bearing the ability to practice.

*Court Decisions*

One court case determined the medical board had jurisdiction in the case of a physician who conspired with an attorney to file claims for personal injuries and split all professional fees collected in the course of the claims. A similar decision was rendered in the case of a physician employing runners for attorneys.

In another case, a court found that the board acted within its discretion in revoking a license for double billing despite the hearing officer's recommendation of no further sanctions.

Another court ruled revocation of a medical license in cases of deceit, malpractice and gross misconduct is proper, "as soundness of moral fiber is as essential to the public health as medical learning." A similar decision was rendered in a case before the podiatry board.

*Reporting Requirements*

The clerk of court must report a felony conviction to the appropriate board. Failure to do so will result in a fine of $1 to $10.

## Minnesota

Most practitioners are covered by individual acts related to their profession, such as: physicians, surgeons, osteopaths, physician's assistant, professional/practical nurse, optometrist, physical therapists, dentists, podiatrists, and pharmacists. Other boards, such as the State Board of Psychology and the commissioner or advisory council of speech language pathology and audiology, have been created to serve the same purpose as the state boards that control actions of the specified medical practitioners.

State boards may suspend, revoke, limit, or deny renewal of a license if the medical practitioner is convicted of a felony, engaged in and was convicted of unethical or unprofessional conduct, including, but not exclusive to, moral turpitude, deceiving, defrauding, or harming the public, or perpetrating fraud by engaging in abusive or fraudulent billing practices, or by pleading guilty or *nolo contendre* to a charge which involved fraud, dishonesty, or incompetence.

Boards may also request a civil penalty or no more than $10,000 or may order said medical practitioner to provide unremunerated professional service to a specified clinic or hospital.

***Court Decisions***

A court decided that if a physician provides false statements about his ability to cure a disease and intends to deceive and impose dishonorable or unprofessional conduct on the public, then the medical board has the right to revoke his or her medical license.

In another decision, the court ruled that a dentist's license could be suspended or revoked if that dentist is convicted of an offense involving fraud or moral turpitude.

Reporting Requirements
The court administrator must report any court judgment or other determination that a provider is guilty of a felony, or is guilty of fraud under the Medicare or Medicaid programs. The report must be filed within 30 days of the reportable event.

## New Jersey

Boards may suspend or revoke licenses in cases of dishonesty, fraud, deception, misrepresentation, false promise or false pretense, or if the practitioner has engaged in professional or occupational misconduct (as determined by the board), or convicted of any crime involving moral turpitude or relating adversely to activity regulated by the boards. A conviction may be a guilty plea, guilty verdict, *nolo contendre* or any such disposition of a case. Civil penalties and restitution may be assessed. The statutes list 13 health professional boards covered by the acts.

Boards of dentistry and medical examiners specifically are given similar powers in the statutes, while the board of psychological examiners are given power in cases of moral turpitude and professional misconduct. The medical examiners board must maintain records of all complaints and disposition thereof.

The state most recently passed a law defining the crime of health care claims fraud. Its provisions include automatic suspension or revocation of a practitioner's license upon conviction. The suspension may be ordered by the court upon application by the attorney general in cases of convictions in other states or at the federal level. Alternatively, the attorney general may seek a license suspension or revocation through the appropriate board.

*Court Decisions*
A court ruled medically unnecessary treatment and other recommendations by a doctor, as well as failure to maintain accurate and truthful patient records, warranted license revocation.

A court ruled that, for purposes of the section on misconduct, the focus should be upon the effect of the professional's activities upon the public, without regard to intentions.

The state dental association took action against a dentist to stop his allegedly fraudulent billing practices on grounds of unfair competition. The court ruled it was enough to show the existence of these practices adopted for the purpose of diverting patients from honest dentists to the fraudulent provider. In the same case, an individual dentist was ruled to have standing to pursue the complaint against the alleged perpetrator.

Similar to a Florida case, a court ruled that a doctor who entered a *nolo contendre* plea must be allowed to attempt to convince the board he was not guilty.

A court ruled the preponderance of evidence in license revocation hearings was a sufficient standard of proof and not a violation of due process.

*Reporting Requirements*
The insurance commissioner or attorney general must notify the appropriate licensing agency of any violation of the insurance fraud prevention act.

## New York

The Board for Professional Medical Conduct may suspend or revoke a license for practicing fraudulently or for conviction of any crime in New York, at the federal level, or in another state where that action would be a crime under New York statutes.

Any person or institution who reports misconduct to the board, in good faith and without malice, has civil immunity.

*Court Decisions*
A court ruled license revocation was warranted for routine fraudulent billing to insurance companies for treatments that never took place.

*Reporting Requirements*
Under the insurance fraud prevention act, the insurance superintendent, when satisfied that "a material fraud, deceit or intentional misrepresentation has been committed in an insurance transaction," must report the violation to the appropriate licensing agency.

## Ohio

Separate statutes cover boards of physicians, physician's assistants, nurses, dentists and dental hygienists, psychologists, chiropractors and counselors and social workers. In general, all boards may suspend or revoke licenses convictions of felonies or misdemeanors (in some cases limited to "in the course of practice").

Dentists and dental hygienists, nurses, physicians, physician's assistants and chiropractors face similar sanctions in cases of fraud, misrepresentation or material deception. In addition, physicians and chiropractors may be disciplined for violations of the relevant codes of ethics.

Waiving of co-payments as an enticement also is grounds for disciplining dentists and dental hygienists, nurses, physicians, psychologists and chiropractors.

*Court Decisions*
A court ruled that fraudulent billing by a dentist was "inextricably intertwined" with the course of practice.

Two court decisions upheld the psychology board's right to revoke a license in cases of Medicaid fraud.

*Reporting Requirements*
The court imposing sentencing for a felony may include a license violation report as one of several nonresidential sanctions when a mandatory prison sentence is not required. The prosecutor must report felony convictions to the appropriate board. These provisions appear not to cover chiropractors, psychologists, counselors or social workers.

## Pennsylvania

Separate statutes cover boards of podiatry, dental examiners, medical licensing, chiropractic examiners, psychologists, and social workers. All may revoke or suspend a license in cases of felonies (whether adjudicated by a guilty plea, a guilty verdict or *nolo contendre* plea). Several boards may invoke penalties in cases of misdemeanors in the course of practice, moral turpitude and/or unprofessional conduct.

In addition, dentists, physicians, chiropractors and psychologists are forbidden to make "misleading, deceptive, untrue or fraudulent representations"; podiatrists may not knowingly make "substantial misrepresentations."

The statute covering psychologists specifically defines intentionally submitting a claim for services not rendered as grounds for discipline.

*Court Decisions*
A court ruled the state dental council "need not find evidence of each of the common-law elements of fraud" in order to suspend a license, but held there must be some knowledge or intent on a dentist's part.

Another court vacated a license suspension on the grounds that an there was no proof that an oral surgeon who owned a clinic who benefited from the fruits of fraud was aware of or participated in the practices.

A court held that billing patients, third-party payers and Medicare is within the scope of the term "practice of medicine." However, in the same case, the court held that Medicare fraud is not "unprofessional conduct."

*Reporting Requirements*
The county district attorney must report felony convictions against health care professionals to the appropriate board within 30 days.

## Rhode Island

Separate statutes cover boards of podiatry, chiropractors, dentists, nurses, physicians, social workers and psychologists. In general, license suspension for revocation is allowed following conviction of a felony, moral turpitude or a crime arising out of practice. Podiatrists, dentists, chiropractors and physicians can be disciplined for "willfully" making false reports or records in the course of practice, or some form of fraud including "grossly overcharging for services."

*Reporting Requirements*

The clerk of the court in which a physician, podiatrist, dentist or dental hygienist is convicted of a crime must report to the appropriate board within 10 days of the judgment.

### Texas

The medical board may revoke or suspend a license on grounds of conviction of a felony or misdemeanor involving moral turpitude, or unprofessional or dishonorable conduct likely to "deceive or defraud" the public.

In addition, the board may act upon conviction of "any act that is in violation of the laws of the State of Texas if the act is connected with" the practice of medicine, as well as "persistently or flagrantly overcharging or over-treating patients."

*Reporting Requirements*

The clerk of the court in which a physician is convicted of a felony, misdemeanor involving moral turpitude, or fraud under Medicare or Medicaid must report that fact to the Department of Public Safety.

## Review of the Findings

### Background and Methodology

It would be hard to over-exaggerate the difficulties the coalition encountered when it began to collect lists of providers for the initial database. While organizations such as The Federation of State Medical Boards (as well as several commercial databases) maintain a central depository for board actions, there is no similar clearing house for court actions, which, since the coalition desired to compare those records to board actions, was crucial to the project. After consultation with numerous experts in data-gathering, including private investigation firms, it became clear that in order to obtain a complete list from any one state, it would be necessary to physically search the records of each court house in that state. The cost of this activity was prohibitive.

The task force then decided that for the purposes of this project, a snapshot of each state would provide some illumination of the relationship between convictions and board actions. A provider would be considered to have committed insurance fraud if they had been convicted in a court of law of a felony charge related to insurance fraud (and that conviction had not been overturned on appeal), or had been excluded from participation in public health programs such as Medicare and Medicaid through the Department of Health and Human Services.

The coalition's staff conducted a trial search for convictions and adjudications through the Lexis database. The trial was limited to Florida, since that state is considered by many insurers and several federal agencies to have a major fraud problem with its medical providers, and it is aggressive in pursuing convictions against perpetrators. It included all federal courts as well as a Florida jury verdict reporting database. The federal search yielded nine records, all of which were decisions of appeals courts. The state search yielded a civil case against a dentist. None of the reports included the type of information needed for this study, so that avenue of inquiry was abandoned.

Press releases and other media articles, such as newspaper and journal articles, that had been collected by the coalition since its inception in 1993, or that were posted on the Internet, were used to gather provider names that could potentially be included in the database. Additional information was gathered from the Department of Health and Human Services list of sanctioned Medicaid providers, which is now available on the Internet. This database was decoded and offenders who were adjudicated to have committed insurance fraud were added to the coalition's database.

Several organizations, such as state attorneys general, state medical boards, the American Medical Association, and district attorneys' offices, also were contacted for help in developing the database. Some of those organizations were able to provide names of offenders convicted of fraud, while others referred the coalition to other sources or could not find pertinent information. With the advent of computer technology, it should become easier to find court records quickly, whether online or through state offices. However, those states that have begun the process had not encoded records far enough in the past to be useful to this project.

Other searches were performed on the Internet to locate any other sites that would be helpful in locating offenders that were convicted of insurance fraud. For example, the AMA, the Federation of State Medical Boards, newspaper archives, press release archives, and several insurance advocacy groups were searched, just to name a few.

Once the list was compiled, it was sorted by state and the names sent to the appropriate state licensing board for comparison to their records. If action had been taken, it was noted in the database. If no information was provided by the board, the task force decided to double-check that name against one of the large central databases.

One of the best known sources is the Federation of State Medical Boards. For a fee, they will search their database and report on any adverse actions against providers. This only covers medical doctors, osteopaths and physician's assistants. However, in order to ensure the match is with the right offender, the board requires any query to provide them with the practitioner's full name, Social Security number, date of birth, medical school and year of graduation. Since the task force felt it was unlikely that the average consumer could obtain all that information, and it would be difficult for the coalition in any case, that avenue was not pursued. Other providers, such as dentists or chiropractors, are listed in the National Practitioner Data Bank. However, that database is not available to the general public.

Fortunately for the average consumer, computer technology and the World Wide Web have evolved to the point that it is economical for commercial data-gathering companies to make their services available and affordable to the general public. Typically, these companies gather information from a variety of sources and compile it into one database. The task force selected MediNet for this project.

## Results and Discussion

After more than a year of scrutinizing records, the coalition compiled a list of 251 providers in the 12 selected states that met the criteria for comparison purposes. The categories for adverse board actions that could have been taken against those providers include: Warning, Censure,

License Suspension, License Revocation, and Other. “Other” included voluntary surrender of license, fines, probation, reprimand or additional action, typically some restrictions on future practice. The final category is No Action Found.

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In the “Other” category, there were 13 cases of voluntary license surrender, 14 cases in which fines were levied, 15 cases of probation, 5 reprimands and 6 cases that involved additional actions such as restrictions on the provider’s practice. The numbers add up to more than 39 cases because some providers had multiple actions taken against them, such as a fine *and* probation.

In cases of license suspension, the average length of the suspension was 9.4 months, with six months being the most common. One three-year suspension was the most extreme.

Of the 251 cases, 46 practitioners (18.3 percent) no longer had licenses to practice as a result of committing fraud.

## Conclusion and Recommendations

This study appears to support the anecdotal evidence: licensing boards often fail to take any actions against those licensees who commit felony offenses related to insurance fraud. While the reasons for this needs further study, there are many ways that states could encourage an increase in actions.

One way is to clarify and standardize the types of offenses that would qualify for action by a licensing board. The variations in current statutes could be leading to confusion and misunderstanding among the boards as to just when they have jurisdiction and authority to act.

Second, strengthen state requirements for reporting convictions to the appropriate board by enacting legislation that covers offenses committed by all types of medical practitioners.

Third, ensure that clear and adequate lines of communication exist between those required to report the offenses and the appropriate licensing entity. These reports should be automated whenever possible.

Fourth, enact provisions similar to the coalition’s model law that would require a licensing board to take action in these cases. Failure to do so will continue to leave boards open to accusations that they are “protecting their own,” whether or not that is the case.

Finally, ensure that licensing boards have adequate resources to do the job they are expected to do.

White collar crimes such as insurance fraud tend to be low-risk, high-reward crimes. Certainly in the health care arena, those who steal from the system often reap rich rewards. At the same time, too many medical providers perceive there's little risk that they will be denied the opportunity to continue to practice their profession, in the course of which they have breached a public trust. Remedying this situation could go a long way toward reducing the high cost of insurance fraud to our society.

## Appendix A

Coalition Against Insurance Fraud
Model Insurance Fraud Act
*(Adopted March 2, 1995)*

Section 6. Administrative Penalties for Practitioners

Any Practitioner determined by the Court to have violated Section 2 shall be deemed to have committed an act involving moral turpitude that is inimical to the public well being. The court or prosecutor shall notify the appropriate licensing authority in this state of the judgment for appropriate disciplinary action, including revocation of any such professional license(s), and may notify appropriate licensing authorities in any other jurisdictions where the Practitioner is licensed. Any victim may notify the appropriate licensing authorities in this State and any other jurisdiction where the Practitioner is licensed, of the conviction. This State's appropriate licensing authority shall hold an administrative hearing, or take other appropriate administrative action authorized by state law, to consider the imposition of the administrative sanctions as provided by law against the Practitioner. Where the Practitioner has been convicted of a felony violation of Section 2 of this Act, this state's appropriate licensing authority shall hold an administrative hearing, or take other appropriate administrative action authorized by state law, and shall summarily and permanently revoke the license and it is hereby recommended by the legislature that the Supreme Court shall summarily and permanently disbar any attorney found guilty of such felony. All such referrals to the appropriate licensing or other agencies, and all dispositive actions thereof, shall be a matter of public record.

## Appendix B

### Public Information Committee

Stephen Brobeck
Executive Director
Consumer Federation of America

Roger Cornwell
Second Vice President
General Reinsurance

Peter Lefkin
Vice President-Federal Affairs
Fireman's Fund Insurance Companies

Ken McEldowney
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