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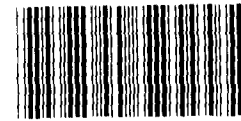
GAO

Report to the Ranking Minority Member,  
Committee on Veterans' Affairs,  
U.S. Senate

May 1988

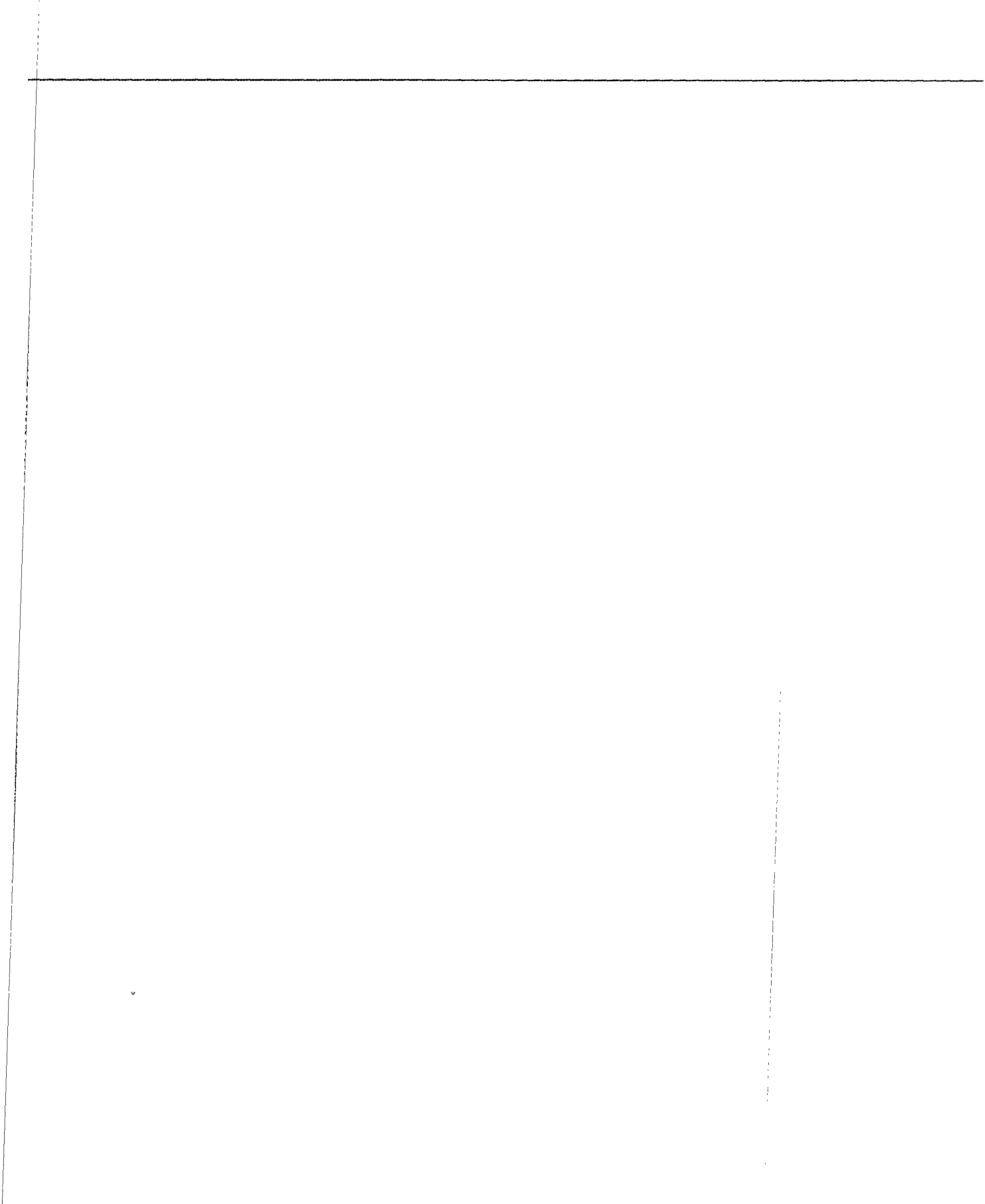
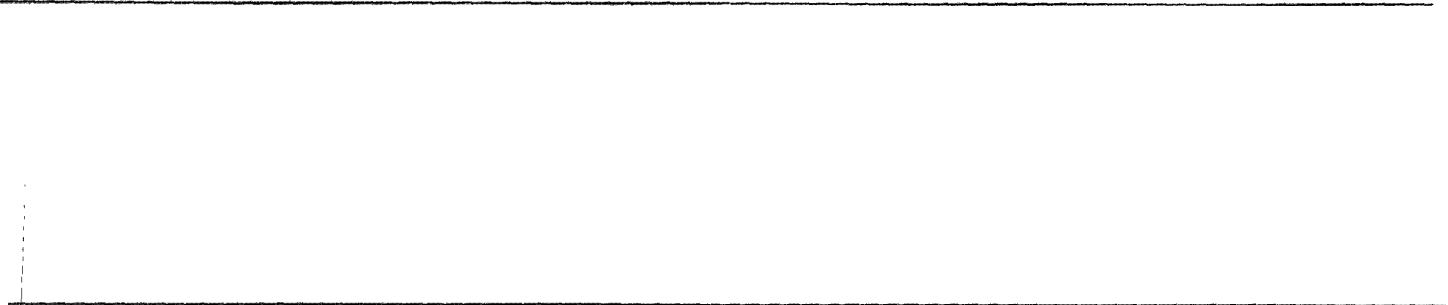
# VETERANS ADMINISTRATION

## Identifying Physicians With License Sanctions—An Incomplete Process



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United States  
General Accounting Office  
Washington, D.C. 20548

Human Resources Division

B-229285

May 13, 1988

The Honorable Frank H. Murkowski  
Ranking Minority Member  
Committee on Veterans' Affairs  
United States Senate

Dear Senator Murkowski:

In response to a portion of your November 18, 1986, request, we have examined the Veterans Administration's (VA) Office of Inspector General's methodology for identifying VA physicians with license sanctions. Our report describes the Office of Inspector General's audit and the Department of Medicine and Surgery's plans to duplicate this audit.

Copies of this report are being sent to the appropriate congressional committees; the Administrator of Veterans Affairs; the Director, Office of Management and Budget; and other interested parties.

Sincerely yours,

Lawrence H. Thompson  
Assistant Comptroller General

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# Executive Summary

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## Purpose

In 1986, the Inspector General of the Veterans Administration (VA) identified 93 VA physicians with sanctions against their licenses, such as suspensions or revocations. VA's Department of Medicine and Surgery plans to repeat the Inspector General's audit in 1988 and every 2 years thereafter in order to improve the identification of physicians with license sanctions. Senator Frank H. Murkowski, the Ranking Minority Member of the Senate Committee on Veterans' Affairs, asked GAO to evaluate the methodology the Inspector General used.

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## Background

VA employs over 47,000 physicians in its health care system of 160 medical centers; in 1985, VA paid about 28,000 additional physicians to provide veterans fee-basis care outside of VA medical centers. Federal law requires that to be eligible for appointment in VA, a physician must be licensed in a state. VA policy indicates that all VA physicians must have licenses with no sanctions; each VA medical center has the ultimate responsibility for license verification. VA does not, however, require verification of fee-basis physicians' licenses.

As part of an audit evaluating the effectiveness of VA's control over the competence of its physicians and the quality of their care, VA's Inspector General identified 47,781 physicians authorized to provide care, as of June 30, 1985, in VA medical centers. The Inspector General did a computer match of those physicians' names in the VA data base with the data base maintained by the Federation of State Medical Boards, which identifies license sanctions. The match showed that 93 VA physicians had records of license sanctions.

To evaluate the Inspector General's methodology, GAO (1) reviewed the records concerning the audit of physicians' licenses and (2) discussed the methodology with the audit staff. In addition, GAO visited two VA medical centers to determine whether the Inspector General's data base included all physicians at those medical centers; GAO discussed the Department of Medicine and Surgery's planned 2-year reviews with the officials responsible.

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## Results in Brief

By using the Inspector General's methodology, the Department of Medicine and Surgery's review of physicians' licenses will include most physicians authorized to provide care to veterans in VA medical centers. The Inspector General's data base did not, however, include two categories of physicians: contract physicians and physicians providing services

in a VA medical center without compensation by VA; for categories included in the data base, some physicians were omitted.

The Department of Medicine and Surgery has decided not to include non-VA physicians who provide care to veterans on a fee-for-service basis outside VA medical centers; this would exclude about 28,000 physicians from the computer match. GAO believes that future computer matches should include all physicians authorized or paid by VA to provide care to veterans, including fee-basis physicians.

The methodology used by the Inspector General to verify the results of the computer match was adequate. It can be improved, however, to make it more efficient when matches are made on a recurring basis.

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## Principal Findings

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### Data Base Did Not Include All Physicians

GAO compared the lists of physicians at two VA medical centers with the Inspector General's data base. GAO found that 39 of 1,160 physicians were in the contract physician and without-compensation categories and were not part of the match (see p. 14). Within the physician categories in the Inspector General's data base, many physicians authorized to provide care to veterans were not included because (1) one set of data covered only one specific date rather than the 5-month period of the review and (2) none of the data were verified with information available at the medical centers. At the two centers GAO visited, 26 of 1,160 physicians were not included in the match for these reasons. In addition, at these two centers, 274 residents were not included in the match either because they were not paid by VA or they left VA before the specific date used by the Inspector General (see p. 14).

Residents and contract physicians should not be included in the data base, according to officials of the Department of Medicine and Surgery. The officials stated that residents are not licensed and are continually supervised while at VA medical centers. GAO found, however, that VA requires residents to be licensed by the second year of their residency programs or meet the requirements of residency programs in non-VA hospitals. In addition, GAO previously reported on inadequacies in VA's supervision of surgical residents.

These officials stated that VA need not check the licenses of contract physicians because that is the responsibility of the contractor. VA is, however, responsible for the care provided in its medical centers. Therefore, GAO believes VA should identify sanctions against contract physicians' licenses.

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**Fee-Basis Physicians Not Included**

After receiving advice from VA's Office of General Counsel, the Department of Medicine and Surgery decided to drop its review of all fee-basis physicians (see p. 17). Medicine and Surgery took the position that including fee-basis physicians in its review of license sanctions would affect whether these physicians would be considered employees and not independent contractors, thus possibly increasing VA's malpractice liability (see p. 17). In addition to the liability issue, Medicine and Surgery officials were against including fee-basis physicians in its reviews because inclusion would create additional workload for VA staff doing the reviews.

GAO does not believe that verifying the licenses of fee-basis physicians would result in their being considered VA employees rather than independent contractors. Although GAO believes that fee-basis physicians should be included in VA's future 2-year reviews, GAO believes Medicine and Surgery should exclude fee-basis physicians from its 1988 review because of the additional workload. VA could minimize the increased workload by obtaining from fee-basis physicians certain additional identifiers, such as their Social Security numbers and birth dates.

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**Verification Adequate but Efficiency Can Be Improved**

The methodology used by the Inspector General for verification appeared adequate. To determine whether the VA physicians matched with the federation's data base were the physicians with license sanctions, his office (1) matched both the names and, when available, Social Security numbers, birth dates, and other identifiers of physicians appearing in VA's and the federation's data bases and (2) checked directly with the states to verify that the VA physicians had sanctions against their licenses. For use on a recurring basis, the methodology can be made more efficient if the VA data base includes additional identifiers for each physician, that is, medical school and date of graduation. This would reduce the number of matches that have to be verified or eliminated by obtaining outside information. The reduction in the amount of time to verify matches, however, would have to be weighed against the amount of time needed for additional identifiers in the data base (see p. 23).

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In addition, because the federation provides data—regardless of how old they are—on any sanction against a physician's license, many of the same matches will recur as the physicians are matched every 2 years. In its future reviews, Medicine and Surgery could benefit from data in earlier verifications. Physician sanctions identified in previous reviews would not then need to be verified.

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## Recommendations

GAO recommends that the Administrator of Veterans Affairs require the chief medical director to (1) include, in a physician data base used to monitor physicians' licenses, all physicians authorized or paid by VA to provide care to veterans; (2) determine whether there are alternatives that would permit VA to keep the 2-year review results and comply with Office of Management and Budget computer matching guidelines; and (3) include the years of physicians' graduations in the data base to expedite verification of the names.

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## Matter for Congressional Consideration

If the Department of Medicine and Surgery's 2-year reviews do not expand to include all physicians authorized or paid by VA to treat veterans, the Senate and House Committees on Veterans' Affairs should consider requiring that VA make this expansion mandatory.

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## Agency Comments

VA agreed (1) to include without-compensation physicians in the Department of Medicine and Surgery's 2-year reviews, (2) that match verification needs to be more efficient, and (3) that the date of graduation is a useful identifier. VA did not, however, agree that contract physicians, fee-basis physicians, and residents should be included in the 2-year reviews. After studying VA's comments, GAO still believes that VA should implement this recommendation.

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## Abbreviations

DM&S	Department of Medicine and Surgery
GAO	General Accounting Office
HHS	Department of Health and Human Services
OIG	Office of Inspector General (VA)
VA	Veterans Administration





# Introduction

In 1986, the Veterans Administration's (VA) Office of Inspector General (OIG) identified 93 VA physicians with sanctions against their medical licenses (for example, suspensions or revocations); OIG reported, however, that VA's internal controls did not identify these physicians. As part of the effort to improve its internal controls over physician licenses, VA's Department of Medicine and Surgery (DM&S) plans to review physicians' licenses in 1988 and every 2 years thereafter (biennial reviews) using OIG's methodology. Senator Frank H. Murkowski, the Ranking Minority Member of the Senate Committee on Veterans' Affairs, asked us to evaluate whether the methodology used by OIG would identify all VA physicians with license sanctions.

## Physician Credentialing Important to Quality Assurance

An increased emphasis on physician credentialing and privileging is an evolving trend in health care quality assurance programs, which are designed to provide high quality health care. VA regulations on quality assurance programs include credentialing and privileging. Credentialing is a hospital's systematic review of the licenses, education, and training of all applicants for appointment and reappointment. Privileging is a hospital's granting or renewing of permission for physicians to perform specified diagnostic and therapeutic procedures on patients. Proper credentialing and privileging should help assure that physicians have the capabilities to perform their assigned duties.

In 1985, the Joint Commission on Accreditation of Healthcare Organizations revised its hospital standards emphasizing, in part, physician credentialing and privileging.<sup>1</sup> In addition, malpractice case law has established certain responsibilities (relating to credentialing and privileging) of hospitals. Before employing physicians or granting them clinical privileges, hospitals have the responsibility for obtaining and verifying information on physicians' clinical privilege status as well as current and past licenses.

The verification of physicians' licenses is one of the first steps toward assuring that physicians provide quality care. States issue licenses to physicians who pass an examination or meet graduate training requirements or both. A physician can have many licenses, one from each state. On the basis of a physician's actions, a state can take sanctions against a

<sup>1</sup>Known as the Joint Commission on Accreditation of Hospitals until 1987, this organization develops hospital standards for quality care and uses these standards to accredit hospitals.

physician's license. Physicians' actions that could lead to license sanctions include narcotics violations, a pattern of medical practice demonstrating incompetence, misrepresentation in applying for a medical license, and allowing an unlicensed person to practice. Sanctions include placing a physician on probation, reprimanding a physician, or revoking or suspending a physician's license. Hospitals verify physicians' licenses to determine whether (1) there are any sanctions and (2) the physicians' actions leading to sanctions should affect hiring or retention.

To be eligible for appointment by VA, 38 U.S.C. 4105 requires a physician to be licensed, certified, or registered in a state; additionally, VA policy states that in order to practice medicine or surgery, all VA physicians must possess licenses with no sanctions. Although DM&S establishes credentialing and privileging, the day-to-day responsibility for these procedures lies with each of VA's 160 medical centers (a medical center may consist of one or more hospitals).

VA's policy does not currently require credentialing checks for fee-basis physicians.<sup>2</sup> Instead, VA policy requires these physicians to be licensed in the states where they practice. Neither VA nor the provisions of any law require verification of a physician's license before a veteran receives care from, or before VA pays, the fee-basis physician. In fact, the veteran, not the VA medical center, selects the fee-basis physician. If VA officials become aware of any noncompliance with program requirements (including the requirement that the fee-basis physicians be licensed in the states where they practice), VA's manual calls for immediate remedial action.

## OIG's Audit of VA Physicians' Licenses

Congressional concern about the quality of medical care provided in federal hospitals increased because of publicity about reports on malpractice and license issues in the Department of Defense and the Department of Health and Human Services (HHS). After hearings in June 1984 about the quality of medical care provided in VA medical centers,<sup>3</sup> VA decided to (1) document its malpractice experience and (2) evaluate the effectiveness of its controls over the competence of its physicians and the quality of their care. As part of this effort, OIG did an audit to (1) determine the

<sup>2</sup>When VA officials determine that certain services are not available in a federal hospital or cannot be economically provided because of geographic inaccessibility, a veteran may be authorized to receive care from a non-VA physician. This is called fee-basis care. The cost of the fee-basis care to veterans in fiscal year 1985 totaled \$74 million for 1,810,267 patient visits.

<sup>3</sup>Senate Committee on Veterans' Affairs, Hearings, June 6, 1984.

status of the medical licenses of physicians employed by DM&S and (2) evaluate the effectiveness of controls in verifying the medical licenses and employment background of VA physicians.

OIG said that the American Medical Association and the Federation of State Medical Boards were the best sources of data for identifying physicians with license sanctions.<sup>4</sup> The association has a computerized data base including past and current data—such as education, license, training, and employment history—for all physicians who live in the United States. These data are obtained from medical schools, licensing agencies, specialty boards, hospitals, and physicians themselves. The federation has a computerized data base including disciplinary actions (such as license revocation, probation, and suspension) and other regulatory actions reported by its member state licensing boards. OIG used the association's data base to verify credentials (that is, license, education, and training) and the federation's data base to identify physicians with license sanctions.

To do this, OIG matched the names of VA physicians with names in the association and federation data bases. The matches included VA physicians employed between February 1 and June 30, 1985. After the names were matched, VA analyzed the matches in two phases in order to verify the identities of the physicians. OIG did the first phase of the match, which eliminated the obvious nonmatches; OIG, together with DM&S, did the second phase, which identified the physicians with license sanctions.

On September 30, 1986, OIG issued a report on physician licensing, identifying 47,781 physicians authorized to provide care in VA facilities as of June 30, 1985. For 93 of those physicians, OIG found records of license sanctions. VA, however, was only aware of sanctions against 41 of these 93.

A special license committee (composed of the medical inspector, assistant chief medical director for clinical affairs, and the director of the Office of Quality Assurance) reviewed the cases of the 93 physicians.<sup>5</sup> The committee determined that 34 physicians had left VA and 49, each

<sup>4</sup>The association, a national organization of physicians, disseminates scientific information to members and the public; cooperates in setting standards for medical schools, hospitals, residency programs, and continuing medical education courses; and provides information to members on national and state medical and health legislation. The federation is the national organization of medical licensing and disciplinary boards, including the medical boards of all the states, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, and 11 osteopathic medical boards.

<sup>5</sup>We are examining VA's decisions on the 93 cases as part of another audit.

with at least one valid license, were legally appointed and doing satisfactory work. Of the remaining 10 physicians, VA ended the appointment of 6, took no action (see fn. 5) on the license sanctions of 2, and (as of December 1987) was in the process of taking disciplinary action for the other 2.

## DM&S' Plans to Review Physicians' Licenses

In December 1985, the Congress enacted the Veterans Administration Health-Care Amendments of 1985 (Public Law 99-166). This law required VA to describe in detail its current efforts, procedures, and future plans for credentialing health care professionals providing care to veterans. As part of its response to this requirement, VA indicated that it planned to duplicate the OIG's audit biennially, beginning in 1988. DM&S has assigned one official to conduct the review and verify the matches.

According to this official, the purpose of the first review is to identify physicians with license sanctions imposed since OIG's audit; the methodology would be identical to that used by OIG—from data base development through verifying the licenses of VA physicians. The review, however, would include physicians employed by VA during a 6-month period, rather than the 5-month period used by OIG.

## Objectives, Scope, and Methodology

On November 18, 1986, the former Chairman and now Ranking Minority Member of the Senate Committee on Veterans' Affairs requested that we examine VA's process for physician credentialing and privileging. We were asked (as part of this study) to examine OIG's methodology for identifying VA physicians with license sanctions. Because DM&S plans to duplicate OIG's audit biennially, the Committee wanted to be sure the methodology used was appropriate. DM&S plans its first review for 1988; consequently, we agreed to look at OIG's methodology and provide recommendations, if any, to OIG before DM&S' first review.

We reviewed OIG's audit guidelines, records, and work summaries; we also had discussions with the staff that did the audit. To determine whether OIG's data base included all physicians authorized to provide care at medical centers, we visited two VA medical centers, one in Pittsburgh and one in Washington, D.C. We developed physician lists from the centers' records for the time period covered by the OIG audit, comparing our lists with theirs; we noted differences and determined, where possible, why physicians were not included in the OIG data base. The numbers of physicians at these two medical centers excluded from the OIG data base cannot be projected to all VA medical centers. The reasons

physicians were excluded, however, applies to all VA medical centers (see p. 13). In addition, we did not attempt to determine whether the physicians excluded from OIG's audit had license sanctions. This is because (1) the time period reviewed by OIG was 1985 and these physicians may no longer be with VA and (2) in the near future, DM&S will be verifying the licenses of physicians currently with VA.

We studied OIG's analysis of VA fee-basis physicians and the reasons why DM&S did not follow up on the names of these physicians, which were provided by OIG. We did a quick check on whether the licenses of some of these physicians did have sanctions. We compared (1) the Social Security number in the federation's data base with the Social Security number in VA's data base and (2) data (for example, names and addresses) for VA fee-basis physicians with data for physicians excluded by HHS from participation in the Medicare and Medicaid programs.

In order to determine their views, we discussed the OIG audit with the federation and the association. Finally, we provided VA officials with the results of our study, to be used in the upcoming DM&S review. Our study, carried out from March to November 1987, was done in accordance with generally accepted government audit standards.

# All Physicians Not Included in OIG's Audit and DM&S' Planned Review

OIG created its data base of VA physicians by using two data bases maintained by VA's central office (that is, centralized data bases). Our review of physician lists at two medical centers showed that because of limitations in the centralized data bases, the OIG data base did not include many VA physicians. The numbers and categories of physicians authorized to provide care in these two VA medical centers, but excluded from OIG's data base, are shown in table 1:

**Table 2.1: Physicians at Two VA Medical Centers Not Included in the OIG Data Base**

Physician category	VA medical centers	OIG data base	Excluded by OIG
Contract	10	0	10
Consulting and attending	353	335	18
Full-time	160	155	5 <sup>a</sup>
Part-time	94	91	3
Without compensation <sup>b</sup>	29	0	29
Resident	518	244	274
<b>Total</b>	<b>1,164</b>	<b>825</b>	<b>339</b>

<sup>a</sup>Additional physician names were not matched because the OIG data base included one misspelled name and the married name of a physician licensed under her maiden name.

<sup>b</sup>Physicians providing services in a VA medical center without compensation from VA.

In addition, the 28,393 physicians paid to provide care to veterans outside of VA medical centers were excluded in the second phase of the match; this was because of a VA policy decision. We believe that in its match, DM&S should include all physicians authorized or paid by VA to provide care to veterans. At this time, however, DM&S does not plan to.

## All Categories of Physicians Not Included in OIG Data Base

VA has no data base that identifies all physicians providing care to veterans. Therefore, OIG created its own data base to use in matching VA physicians with physicians in the data bases of the federation and the association. The two centralized data bases OIG used to create its own data base included the following identifiers: for the first data base, complete name, birth date, and Social Security number of the full-time and part-time physicians, as well as VA-paid residents, all on record as of one specific date, June 30, 1985;<sup>1</sup> for the second data base, the first and last names, middle initials, and Social Security numbers of the consulting

<sup>1</sup>Residents are physicians (that is, medical school graduates) who are in graduate medical training. Because a resident may rotate through a VA medical center and other medical school-affiliated hospitals, a resident at a VA medical center may actually be paid by the medical school.

and attending physicians authorized to provide care in VA medical centers during fiscal year 1985.<sup>2</sup>

The OIG data base therefore did not include two categories of physicians providing care in VA medical centers: contract physicians and physicians providing care without compensation. Contract physicians are physicians who are provided full-time to the VA by contractors, such as medical corporations; the data bases may identify the contractors, but do not include the names of the individual physicians. At one of the medical centers we visited, we found 10 contract physicians who were not included in the OIG data base. The other medical center we visited did not have contract physicians during the period reviewed. In addition, 29 physicians appointed in a without-compensation category were not matched because this category (in which there were consulting physicians, attending physicians, and visiting scientists) was not included in either of the two centralized data bases.

DM&S does not plan to include these contract and without-compensation physicians. In addition, it will not include all residents.<sup>3</sup> Although the OIG data base did include VA-paid residents, at the two medical centers we visited, 274 residents were not included; this was because they were assigned to the VA medical centers on a without-compensation basis or rotated out of the medical centers before June 30, 1985—the date covered by the OIG data base—or both. According to the chief of VA's academic affairs, although many residents may rotate through one residency position, VA may pay a resident while he or she rotates through the VA medical center as well as other affiliated hospitals. The medical school or the hospitals pay the other residents not paid by VA, who rotate through the VA residency position. Only residents who were paid by VA were included in the data base used by OIG to develop its data base. Therefore, residents who practiced in VA medical centers but were not paid by VA were not included. In addition, residents rotate through hospitals at different intervals. Rotations at VA medical centers generally last from 1 to 6 months so that many residents were also excluded by the limiting of the VA data base to a specific date.

We discussed the exclusion of categories of physicians with DM&S officials responsible for the initial biennial review (in 1988). DM&S officials

<sup>2</sup>Consulting physicians are specialists hired by a medical center to provide advice; attending physicians are hired to give or supervise services in a medical center.

<sup>3</sup>DM&S officials recognize, however, that the VA-paid residents will be included in the match because these residents are included in a centralized data base.



agreed that without-compensation physicians should ultimately be included; the DM&S official responsible for the review explained, however, that DM&S sees its 1988 review as a learning experience to be refined in subsequent reviews. Therefore, DM&S plans to use the centralized data bases and not include without-compensation physicians in the 1988 review. DM&S officials did not believe that DM&S should verify the licenses of contract physicians, residents, and fee-basis physicians.

According to DM&S officials, DM&S need not check the licenses of contract physicians because that is the responsibility of the contractor; checking would affect whether these physicians would be considered VA employees and not independent contractors. In addition, they believe checking could increase VA's malpractice liability because VA is responsible for actions of employees but not actions of contractors. Even without VA's checking the licenses of contract physicians, however, questions can be raised as to whether VA is responsible for the actions of these physicians. In situations where the patient is unaware that certain physicians are not VA employees, there is a basis for the courts to hold VA liable for those physicians' actions. In one case involving a contract physician in a VA medical center, the court held that the government could not argue that the physician was a nongovernment employee. The court reasoned that "The VA holds itself out as a full service hospital [and creates the impression] that the hospital agents, not independent contractors, will provide medical care to those who enter the hospital."<sup>4</sup> This potential liability provides a rationale for VA's including contract physicians in its biennial reviews.

Further, according to DM&S officials, residents do not need to be included in the data base for these reasons: (1) Residents do not have licenses, so that matching them with the federation's data base may not produce any results. (2) Residents are continually supervised because they are not granted medical privileges; therefore, they do not function independently in a VA medical center.

We disagree with the position that residents do not need to be included in the DM&S review. Many residents are licensed; in fact, VA requires residents to (1) be licensed before their second year of residency or (2) meet the requirements of non-VA hospitals in the residency program. In

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<sup>4</sup>Gamble v. United States, 648 F.Supp. 438, 441 (N.D. Ohio, 1986).

addition, an earlier GAO report pointed out inadequacies in VA's supervision of surgical residents.<sup>5</sup> Finally, of the 93 physicians with license sanctions identified by OIG in its audit and confirmed by DM&S, 17 were residents.

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## Physicians Omitted From Some Categories in OIG Audit

Within the categories of physicians included in the OIG data base, some physicians authorized to provide care to veterans from February 1 to June 30, 1985, were missing. These physicians were not included because (1) one data base used by OIG covered only one specific date, June 30, 1985; and (2) no data in the data bases were verified by comparison with information at the medical centers.

The fact that one of the data bases used only covered one date led to the following problem: At the two medical centers we visited, five full-time and three part-time physicians who were VA employees for some time during February to June 1985 were not included in the OIG data base. In addition, at the two medical centers we visited, we found two physicians who were not matched with federation data because they were listed under different names in the data bases. For example, a part-time physician was not matched with the federation data base because her medical license was recorded under her maiden name, and the centralized data base listed her married name. In addition, we could not determine, nor could medical center staff explain, why 6 attending and 12 consulting physicians were not in the centralized data base. Verification of the centralized data bases with information at the medical centers would have identified these differences.

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## Fee-Basis Physicians in OIG Audit

In addition to the physicians authorized to provide care in VA medical centers, OIG also created a data base of fee-basis physicians, those paid to provide care to veterans outside VA medical centers. From a centralized data base, OIG obtained the names, addresses, and some Social Security numbers of 28,393 fee-basis physicians; initially, OIG matched the names of 1,010 of these physicians with the federation's data base of physicians with license sanctions. OIG then did an analysis to verify "probable" matches, using a procedure similar to that explained in the next chapter. OIG identified 97 fee-basis physicians who were most likely the same as those physicians with license sanctions in the federation's data base.

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<sup>5</sup>VA Hospitals: Surgical Residents Need Closer Supervision (GAO/HRD-86-15, Jan. 13, 1986.)

In its Interim Report on the Audit of Physician Licensure, OIG stated that

"The VA does not review the credentials of physicians providing services on a fee basis . . . . Since medical licensure is public information and a reflection of a state licensing board's confidence in a physician's qualification to practice medicine, we believe that the Agency has the responsibility to perform an appropriate verification of licensure and to advise veterans if the treating physician's license is impaired. We recognize that this issue could have legal and program ramifications and, therefore, we defer to the General Counsel in consultation with the Chief Medical Director on any actions to be taken."

On August 7, 1986, VA's Office of General Counsel stated, in a memorandum to the chief medical director, that VA did not have a legal obligation to check the licenses of private physicians who participate in VA's outpatient care program. The Office of General Counsel indicated that it would have no legal objection to a DM&S decision to add a degree of oversight to fee-basis physicians (by checking licenses); the data, however, would have to be maintained and used in accordance with the requirements of the Privacy Act of 1974. Additionally, the Office of General Counsel cautioned the chief medical director that checking the licenses of fee-basis physicians would affect whether these physicians would be considered VA employees and not independent contractors. The Office of General Counsel concluded that such a decision could possibly increase VA's liability because VA is responsible for actions of employees but not actions of independent contractors.

As a result of the Office of General Counsel's opinion, DM&S did not review OIG's 97 "probable" matches of fee-basis physicians with the federation's data base of physicians with license sanctions. This was because DM&S took the position that no contractual relationship existed between the VA and fee-basis physicians.

In its final report, OIG disagreed with the DM&S decision, pointing out that HHS and the Department of Defense reimburse private physicians as VA does.<sup>6</sup> The Medicare and Medicaid Patient and Program Protection Act of 1987 allows HHS to exclude from Medicare and Medicaid programs any physician whose license has been revoked or suspended by a state for reasons relating to the following: competence, performance, or financial integrity. The Department of Defense can exclude any physician excluded by HHS.

<sup>6</sup>HHS reimburses private physicians on a fee basis for services rendered under the Medicare program. The Department of Defense reimburses physicians for nonfederal medical care (provided under the Civilian Health and Medical Program of the Uniformed Services) to dependents of active and retired military members.

Although the 97 fee-basis physician matches were not verified by VA, we identified two fee-basis physicians who most likely were physicians with license sanctions.<sup>7</sup> We also studied the HHS data and determined that HHS had excluded another two VA fee-basis physicians from the Medicare and Medicaid programs for a specified period of time.

## Fee-Basis Physicians Will Not Be Included in DM&S Review

DM&S officials do not plan to include fee-basis physicians in the DM&S review because of (1) the additional workload involved in verification and (2) their belief that checking the licenses of fee-basis physicians would increase VA's malpractice liability. We agree that including fee-basis physicians in the review would increase the workload. VA can, however, take steps to reduce the workload by asking the fee-basis physicians to provide identifiers (for example, complete name, birth date, medical school, and date of graduation) before payment for services provided to veterans. This would obviate the need to gather these data from outside sources.

We disagree, however, with the General Counsel's opinion that checking the licenses of fee-basis physicians would affect whether these physicians would be considered employees and not independent contractors, thus possibly increasing VA's potential liability. It has been generally held that an employee is distinguished from an independent contractor by (1) the employer's control over the work product and (2) the employer's right to direct what shall be done, as well as when and how.<sup>8</sup> Applying these general standards, it appears unlikely that a court would consider fee-basis physicians to be employees rather than independent contractors. We are aware of no court cases that suggest otherwise.

## Conclusions

We believe the OIG's audit, which identified 93 VA physicians with license sanctions, represents an effective foundation for improving VA's selection and retention of qualified physicians. We believe DM&S should, however, modify OIG's methodology by including all physicians authorized or paid by VA to provide care to veterans. In addition, DM&S should not rely solely on the existing centralized data bases because they (1) do not include all categories of physicians authorized to treat veterans, (2) exclude residents in VA medical centers who are not paid by VA, and (3) are inconsistent with the information available at the medical centers.

<sup>7</sup>We matched the Social Security numbers of these VA physicians with the Social Security numbers of physicians with license sanctions in the federation data base.

<sup>8</sup>41 Am. Jur. 2d Independent Contractors sec. 5 (1968).

DM&S plans to include in its review certain categories of physicians authorized to treat veterans during a 6-month period. We agree the 6-month period would include the necessary full-time, part-time, contract, and without-compensation physicians. More important, a 6-month period is necessary in order to include a significant number of residents since they stay at VA medical centers for only short periods of time, but may rotate back at later dates.

We agree that DM&S should exclude fee-basis physicians from its 1988 review because (1) DM&S has only one official assigned to do this review and (2) VA currently has only the names, addresses, and some Social Security numbers for fee-basis physicians. The addition of over 28,000 fee-basis physicians would significantly increase the workload and extend the time period of the 1988 review. We believe DM&S should, however, provide some assurance that the physicians paid by VA to treat veterans have no license sanctions. Therefore, DM&S should start preparing for the biennial review following the 1988 one by collecting additional identifiers, such as birth date and Social Security number, for all fee-basis physicians; in reviews after 1988, fee-basis physicians should be included.

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## Recommendations

We recommend that the Administrator of Veterans Affairs require the chief medical director to establish a complete physician data base to be used to check the licenses of physicians authorized or paid by VA to treat veterans. This data base should

- include all physicians authorized or paid by VA to treat veterans and
- be verified with information at individual medical centers.

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## Matter for Congressional Consideration

If VA does not expand its biennial reviews to include all physicians authorized or paid by VA to treat veterans, the Senate and House Committees on Veterans' Affairs should consider requiring VA to include in its biennial reviews all physicians authorized or paid by VA.

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## Agency Comments and Our Evaluation

In a March 10, 1988, letter commenting on a draft of this report (see app. I), the Administrator agreed to include without-compensation physicians, once the data are computerized, in future matches. He did not agree, however, that contract physicians, fee-basis physicians (outside VA medical centers), and residents should be included in the review.

Concerning contract and fee-basis physicians, VA said that Public Law 99-166 did not require the inclusion of these physicians in its reviews; rather, the law specifically required VA to include only VA employees and applicants for employment. According to VA, for contract and fee-basis physicians (outside VA medical centers), the responsibility to monitor credentials rests with HHS, state medical boards, and professional societies.

We continue to believe VA should include contract physicians, fee-basis physicians, and residents in its biennial reviews. Although the law did not specifically require VA to include contract and fee-basis physicians, it did require VA to establish a credentialing procedure to monitor health care professionals providing care to veterans.

As of January 1, 1988, the Joint Commission on Accreditation of Health-care Organizations requires hospitals to independently check physicians' credentials back to the original sources (for example, medical school, state licensing board, or residency program). According to this requirement, VA will have to verify credentials back to the original sources. This requirement could aid in eliminating potential liability problems.

Since VA may be held liable for the actions of contract physicians, a biennial review would provide VA some assurance that its contractors are screening the credentials of the physicians provided to VA. Concerning fee-basis physicians, although VA requires them to be licensed in the states where they practice, it does not do any verification. Since VA authorizes and pays for care from fee-basis physicians, we believe it should have some assurance that these physicians have no license sanctions.

VA responded that it believed residents should not be included because it wanted to hold the residents to the "same standard" as the affiliated medical schools. In a 1986 report, however, the HHS Inspector General found that medical schools often do inadequate screening of residents' medical credentials. Since VA is responsible for the actions of the residents, we believe VA should include residents in the DM&S review.

We continue to believe that all physicians authorized or paid by VA should be included in DM&S' biennial reviews. We have revised our report to propose that if VA does not expand its reviews to include contract physicians, fee-basis physicians, and residents, the House and Senate Committees on Veterans' Affairs should consider amending the law to require that VA include them.

VA said that it would consider whether to verify the centralized data bases by comparing them with information at the medical centers. VA indicated, however, it was concerned that the verification may be of questionable value because the information at the medical centers was used to develop the centralized data bases. VA said it would look into the names of the consulting and attending physicians missing from the centralized data bases and try to account for name changes through searches of computer records.

We agree that if DM&S is only including full-time, part-time, consulting, and attending physicians, the verification of the data base might not be as useful as it was in our study. If VA includes any additional categories of physicians, however, it should verify the data base since our study identified discrepancies between OIG's computer-generated data base and the list we developed from medical center records. If DM&S does not verify the data base, we do not understand how it will know whether it has identified name changes, as well as consulting and attending physicians' names, missing from the data base.

# Verification Adequate but Could Be More Efficient

OIG destroyed records documenting some of its analyses. We were, therefore, unable to fully confirm OIG's verification of VA physicians with license sanctions. The methodology used to verify the physicians in question appeared adequate, however.

The verification took OIG 360 staff days. The analysis time could be reduced by (1) including additional identifiers in the data base and (2) saving the verification data between biennial reviews to avoid duplication.

## OIG Methodology for Verification

After creating a data base, OIG matched it with the federation and association data bases. OIG identified 775 names of 47,781 VA physicians (authorized to provide care in VA medical centers) that matched the federation's data base of physicians with license sanctions. To verify whether the physicians with license sanctions were VA physicians, OIG staff said they reviewed the results of the matches in two phases. In the first phase, OIG (1) identified VA physicians who appeared to be the physicians with license sanctions in the federation data base and (2) eliminated those VA physicians who most likely were not the physicians in the federation data base.

According to the OIG officials responsible for this phase of the audit, they compared federation data with additional data from the OIG data base. As a result, physicians were retained or dropped from the category of probable matches. For example, if the VA physician and the physician listed by the federation had the same name and Social Security number, the VA physician was kept in the category of "highly probable" matches. If the VA physician and the physician in the federation's data base had the same name but different Social Security numbers and birth dates, however, the VA physician's name would be dropped from the "probable" matches category. In instances where the only data available to compare with VA's data were names, OIG requested data from the states issuing the license sanctions. The states' data were then compared with the VA information to determine whether the physician named in the OIG data base and the physician named in the federation data base were the same.

OIG kept a physician's name in the "probable," rather than "highly probable," matches category if any doubt existed about whether the VA physician was the one with the license sanction, according to an OIG official. For instance, if the VA physician and the physician in the federation's data base had the same name but different Social Security numbers and



no birth dates or other identifiers, OIG would not drop the name from the "probable" matches category until it received more data on additional identifiers.

We were not able to fully verify the process used in this first phase of the analysis (see p. 10) because OIG destroyed the documenting records. According to OIG staff, the records were not maintained because of their implications for the Privacy Act of 1974, that is, inconclusive data identifying VA physicians as physicians with license sanctions.

In the second phase of the analysis, OIG asked state licensing boards for additional information about each physician considered a probable match. DM&S determined whether the VA physician was the physician with a license sanction. For this phase, OIG kept the records documenting its decisions to drop from the "probable" matches category those physicians without license sanctions. We reviewed the records and determined that OIG and DM&S had adequate data for (1) dropping VA physicians because they were not probable matches and (2) confirming that VA physicians were the physicians with license sanctions.

## **DM&S Planned Verification Could Be More Efficient**

Because DM&S has only one official assigned to do the biennial review, this official was concerned about the amount of time it will take to verify the names matched with the federation's names. According to the OIG official responsible for the OIG audit, the verification took about 360 staff days.

The verification period could have been shortened considerably by including the VA physicians' medical schools and dates of graduation in the OIG data base, according to the executive vice president of the federation. With these two additional identifiers in the first phase of the analysis, more identical VA physician names with different additional identifiers could have been eliminated with relatively little effort. While the data base is being created, additional time, however, would be needed to obtain data (from the medical centers or physicians) on these identifiers.

In addition, because the federation provides data, regardless of how old, on any sanction taken against a physician's license, many of the same matches will recur in DM&S' biennial reviews. DM&S could benefit from its initial review by saving its analyses for future reviews. This would avoid the need to verify, during each biennial review, whether the same physician had or did not have a license sanction.

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## Conclusions

Although there were no records documenting the verification of the matches, we believe the OIG methodology was adequate for determining the matches needing further review or action. But because DM&S has only one official assigned to biennial reviews, it should consider additional identifiers for the data base, thus saving time and effort in analysis.

Although we understand OIG's decision to destroy physician data that do not lead to positive matches, we see a need for maintaining such data for future matches. OIG was responsible for a one-time audit demonstrating the existence of a problem and recommending corrective action; that responsibility was met. DM&S, however, is responsible for managing the verification of physician credentials. Maintaining match data would decrease the effort expended by DM&S during its biennial reviews. Many of the same names with license sanctions will show up at each biennial review; DM&S could use its earlier data to quickly determine whether a match should be verified.

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## Recommendations

We recommend that the Administrator of Veterans Affairs require the chief medical director to (1) determine whether there are alternatives that would permit VA to keep the results of the DM&S biennial reviews while complying with Office of Management and Budget computer-matching guidelines and (2) include physicians' years of graduation in the data base to expedite verification of the names matched with the federation's names.

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## Agency Comments and Our Evaluation

In a draft of this report, we recommended that VA retain the records used in the verification of the matches so that each biennial review could be completed without duplication of effort. VA agreed that some type of system efficiency is needed, but stated that the records generated as part of the computer matches will be subject to Office of Management and Budget computer-matching guidelines; these require that such records be kept only while the investigation is active. Therefore, we modified the recommendation to include the computer-matching guidelines.

Secondly, in our draft report, we recommended VA consider including both physicians' medical schools and dates of graduation in the data base; this would expedite verification of the matched physician names. According to VA, the year of graduation is already part of one of its centralized data bases and is a useful identifier. The effort expended in collecting and entering medical school names for the data base, however,

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**Verification Adequate but Could Be**  
**More Efficient**

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according to VA, would require a one-time data collection effort that may be greater than the effort saved in individual verifications. Because of this VA conclusion, we changed our recommendation to only require that VA add the year of graduation to its data base.

# Comments From the Veterans Administration

Office of the  
Administrator  
of Veterans Affairs

Washington DC 20420



MAR 10 1988

Mr. Richard L. Fogel  
Assistant Comptroller General  
Human Resources Division  
U.S. General Accounting Office  
Washington, DC 20538

Dear Mr. Fogel:

This responds to your request that the Veterans Administration (VA) review and comment on the General Accounting Office (GAO) December 28, 1987, draft report VETERANS ADMINISTRATION: Identifying Physicians with Licensing Restrictions an Incomplete Process. This report concerns the Department of Medicine and Surgery's (DM&S) plans to follow up on the VA Office of Inspector General's Audit of Licensure Status of Veterans Administration Physicians by conducting a match program in 1988 and every 2 years thereafter as a means of monitoring physicians' credentials.

GAO recommends that a complete physician data base be used to check the licenses of all physicians authorized or paid by VA to treat veterans. We concur with the portion of the recommendation that applies to conducting a licensure review of physicians treating veterans in VA medical facilities. We will also include nonresident without-compensation physicians in future screening matches when the data are computerized. We agree to consider the feasibility of verifying our data bases with data at individual medical centers. We do not concur with including contract physicians, off-station fee-basis physicians, or residents in the target population.

We are unable to concur in the recommendation to keep the records used in the confirmation of the matches, thus avoiding duplication of effort during each 2-year review, because retention is contrary to Office of Management and Budget (OMB) guidelines. GAO also recommended that physicians' medical schools and dates of graduation be included in the data base. The year of graduation is already an element in our personnel and accounting system. Adding the medical school name would involve an extensive one-time data gathering that may exceed the effort used in individual verifications.

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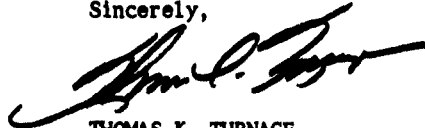
2.

Mr. Richard L. Fogel

This will be DMS's first experience with using a matching program to identify restricted licenses. We believe the approach is reasonable and expect it to provide valuable experience and a basis for considering modifications in future matches.

The enclosure addresses the report recommendations in more detail.

Sincerely,



THOMAS K. TURNAGE  
Administrator

Enclosure

Enclosure

VETERANS ADMINISTRATION COMMENTS ON THE DECEMBER 28, 1987  
GAO DRAFT REPORT VETERANS ADMINISTRATION: IDENTIFYING  
PHYSICIANS WITH LICENSING RESTRICTIONS AN INCOMPLETE PROCESS

GAO recommends that the Administrator of Veterans Affairs direct the Chief Medical Director to establish a complete physician data base to be used to check the licenses of physicians authorized or paid by VA to treat veterans. This data base should

--include all physicians authorized or paid by VA to treat veterans and

--be verified with data at individual medical centers.

We do not agree to include contract or off-station fee-basis physicians in the target population for the match with the records of the Federation of State Medical Boards. These physicians are independent contractors and not VA employees. We believe it is the responsibility of the Department of Health and Human Services, state medical boards, and professional societies to monitor the credentials of these physicians. However, some contract physicians who provide care in VA facilities are in the data bases to be used again this year; they will again be included. Most fee-basis physicians are private physicians providing care in non-VA settings. They will not be included in the match, but those providing care in VA facilities will be included.

Our decision to limit licensure review to physicians furnishing care to veterans in VA medical facilities is supported by section 204 of Public Law 99-166. Subsection (b) of that law required the VA to establish a procedure to monitor the credentials, which includes licensure, of health-care professionals providing care to veterans. It specifically required that the VA procedure apply to VA employees and applicants for employment. In addition, in the legislative history of section 204, Congress specifically referred to "VA health-care professionals" in connection with the mandated credentials monitoring procedure. Moreover, this credentials monitoring procedure was enacted as part of the VA's quality assurance program of health care provided by VA medical facilities.

We do not agree that residents should be included in the data base because we want to hold them to the same standards as required by affiliated medical schools. These standards require that the resident be in a residency program accredited by an Accreditation Council for Graduate Medical Education. Residents may either be licensed by the second year or meet any registration or other equivalent requirements of the affiliate.

Physicians who serve without compensation are currently appointed by letter and are not included in an automated data base. To include these

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2.

physicians in the match, a computerized data base will need to be established. We will include nonresident without-compensation physicians in future licensure screening matches when the data are computerized.

Concerning the recommendation to verify the data base with data at our medical centers, we will consider the feasibility of including such a verification in the 1988 match. Our concern is that we would be verifying the computerized data for the match against the records of individual facilities which were used to create the computerized data base. Such an approach appears to be circular and of questionable value. We understand that GAO may have discovered the names of several consultant and attending physicians who were missed in the 1985 match by checking a list of privileged physicians at one of the medical centers visited. We will look into the matter before the 1988 match to determine if such a check at each facility would be productive.

Your report also mentions that a physician whose name changed was identified by comparison with data at the medical center. In our 1988 match, we try to account for name changes through searches of computer records. In addition, we plan to cover a 6-month period in our match and will include physician gains and losses that occurred during that period.

GAO also recommends that the Administrator of Veterans Affairs direct the Chief Medical Director to

--keep the records used in the confirmation of the matches so that each 2-year review of licenses can be accomplished without duplication of effort, and

--consider including physicians' medical schools and dates of graduation in the data base to expedite confirmation of the names matched with the Federation.

We are unable to concur in retaining the records. The verification records generated as part of the computer match in this case are subject to the OMB computer matching guidelines, 47 Fed. Reg. 21656-58 (1982), which require that "[r]ecords relating to hits will be kept only so long as an investigation, either criminal or administrative, is active." (Paragraph 5.d. (2).) Consequently, the VA may not retain verification records on individuals after the match is completed. We agree that some type of system efficiency will be needed, but at this time, it is unclear what methods would prove effective and be permissible under the OMB guidelines.

Concerning the second part of this recommendation, the year of graduation is already a data element in our Personnel and Accounting Integrated Data System, and we agree that it is a useful identifier. However, adding the medical school name to the data base would require a change to the current system and involve a one-time data collection for all VA physicians. The effort expended in collecting and entering this information may be greater than the effort saved in individual verifications. We do not believe a physician should be excluded from further investigation based on a nonmatch of the medical school name.

Appendix I  
Comments From the Veterans Administration

3.

As a general comment on the report, we suggest that the Executive Summary be clarified concerning the licensing of residents. The statement on page 4, "GAO found, however, that VA requires residents to be licensed by the second year of their residency program....", while accurate is incomplete. The qualification standard actually requires that residents either be licensed by the second year or "meet any registration or other equivalent requirements established for residents of non-VA hospitals with which the VA hospital is affiliated for training purposes." The effect of this requirement is that, depending on the policy of affiliated medical schools, residents need not be licensed by their second year. Your report acknowledges this point on page 23.

Now on p. 3.

Now on p. 15.



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