

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION
CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES
Health Care Department Operations Manual

1.3.4 Health Care Executive Committee

(a) Procedure Overview

The Health Care Executive Committee (HCEC) oversees and reviews all peer review matters brought before it by the Medical Peer Review Committee (MPRC). As part of its duties, the HCEC shall perform the following:

- (1) Receive, review, and make final decisions on licensed medical provider credentialing, privileging and reappointment in accordance with the Health Care Department Operations Manual, Section 1.4.6, Licensed Medical Provider Credentialing and Privileging.
- (2) Act on all recommendations and Final Proposed Actions submitted by the MPRC which may include accepting findings and recommendations, accepting findings but determining a different Final Proposed Action, remanding matters for additional investigation or deliberation, and rejecting Final Proposed Actions thus terminating peer review or privileging proceedings.
- (3) Ensure that licensed medical providers subject to HCEC clinical review have been provided due process during that review and that HCEC recommendations are supported by “substantial evidence.”
- (4) Review and take action as necessary on all consent calendar items.
- (5) Meet as required to review all matters brought before the HCEC.
- (6) Appoint the Hearing Officer in Pre-Deprivation Hearings and take action on post-hearing recommendations which may include modifying or affirming a Final Proposed Action.

(b) Responsibility

- (1) The Undersecretary, Health Care Services, shall appoint a member of the HCEC to act as the HCEC Chairperson.
- (2) The HCEC Chairperson shall preside at all meetings.
- (3) The Chief Counsel of the California Correctional Health Care Services (CCHCS) Office of Legal Affairs (COLA) shall appoint an attorney from COLA to provide legal counsel to the HCEC. That attorney shall provide advice to members of the HCEC on procedural and substantive matters, on resolution of appeals taken from actions of the HCEC, and shall coordinate representation on appeals. Legal counsel shall provide a regular report to the HCEC on legal matters, including the status of appeal cases and changes in legislation or court orders affecting the HCEC.

(c) Procedure

(1) Membership

(A) The HCEC is comprised of the following voting members:

1. Deputy Director, Human Resources
2. Deputy Director, Medical Services
3. Deputy Director, Mental Health Services
4. Deputy Director, Dental Services
5. Deputy Director, Nursing Services

(B) Any changes or additions to the membership shall be approved by the Undersecretary, Health Care Services.

(2) Meetings

(A) The HCEC shall meet monthly or as often as necessary at the request of the HCEC Chairperson to consider MPRC recommendations regarding Final Proposed Actions. The HCEC may meet in person or via teleconference, as necessary.

(B) The HCEC Chairperson shall approve each agenda and direct the HCEC support staff to distribute the agenda to all HCEC members and legal counsel one week before the scheduled meeting.

(C) A quorum is necessary to conduct the business of the HCEC and exists when a majority of the voting membership is present.

(3) Confidentiality

(A) The proceedings and records of the HCEC shall be confidential and protected from discovery to the extent permitted by law.

(B) Only the members of HCEC and members of the HCEC support staff and legal counsel are permitted to attend meetings of the HCEC. However, the HCEC Chairperson may permit a guest to attend on a case-by-case basis.

(4) Conflict of Interest

(A) Regular voting members of the HCEC, as California Department of Corrections and Rehabilitation (CDCR) and CCHCS employees, shall comply with applicable laws and regulations regarding disclosure of outside

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employment, enterprises or activities, and prohibitions against engaging in conflicts of interest. These include the California Code of Regulations, Title 15, Sections 3409 and 3413, as well as pertinent provisions of the Government Code, Public Contracts Code, and the Fair Political Practices Act (FPPA). Among other things, these requirements prohibit CDCR and CCHCS employees from deriving any compensation from any entity doing or seeking to do business with the State of California.

- (B) Concurrently with their annual completion and submission of the Statement of Economic Interests (Form 700) pursuant to the FPPA, members of the HCEC shall provide a copy of their submitted Form 700 to the HCEC Chairperson to be kept on file for reference in the event that a member's ability to participate in a HCEC decision may be impacted by an actual or potential conflict of interest.
- (C) If any matter of business before the HCEC represents an actual or potential conflict of interest for any member, he or she shall disclose the conflict or potential conflict to the HCEC and recuse himself or herself from participating in any discussion or voting on the matter creating the conflict or potential conflict.
- (D) Final decisions regarding conflict of interest questions shall be decided by the HCEC Chairperson. In the event that the HCEC Chairperson has an actual or perceived conflict of interest, final decisions regarding the conflict of interest shall be decided by the Undersecretary, Health Care Services.

(5) Voting

- (A) Each HCEC voting member shall have one vote on any matter that comes before the HCEC and shall have no vote if he or she has previously voted on the matter at any other proceeding. Only duly appointed members shall vote on HCEC matters. A motion carries when it receives a simple majority of the voting members participating in the meeting.
- (B) All voting members may vote on matters involving medical, dental, or mental health providers, amendments to policies and procedures, bylaws, resolution of appeals, and any other matters coming before the HCEC.
- (C) The current edition of Parliamentary Law and Rules of Order for the 21st Century shall govern parliamentary procedures.
- (D) The HCEC Chairperson may schedule special meetings of the HCEC at his/her discretion.
- (E) A record shall be kept of the HCEC proceedings in the form of meeting minutes.

(6) HCEC Review of MPRC Action

- (A) The HCEC shall review all MPRC recommendations and Final Proposed Actions and may take one of the following actions:
 - 1. Accept the factual findings and recommendations of MPRC.
 - 2. Accept the factual findings of the MPRC but reject the Final Proposed Action as being inappropriate based on the factual findings and prepare a new Final Proposed Action.
 - 3. Remand the matter to the MPRC for additional investigation or deliberation. The MPRC shall be provided a date by which the HCEC expects the matter to be returned.
- (B) Interim privilege modifications such as summary suspensions and provisional privilege restrictions do not require HCEC action until a Final Proposed Action is submitted to the HCEC.
- (C) The HCEC shall ensure that medical providers subject to MPRC clinical review have been provided due process during that review and the MPRC's recommendations are supported by substantial evidence.
- (D) The HCEC shall give great weight to the recommendations of the MPRC. In carrying out its review, the HCEC may request any additional information from the MPRC that it requires to complete its review of any case before it.
- (E) In performing its functions, the HCEC may not act in an arbitrary or capricious manner.
- (F) In instances in which MPRC's failure to investigate or initiate a privileging action is contrary to the weight of the evidence, the HCEC shall have the authority to direct MPRC to initiate an investigation or a privileging action.
- (G) If the MPRC fails or refuses to take action in response to a direction from the HCEC, the HCEC shall have the authority to independently take action with respect to a medical provider's privileges in accordance with the policies and procedures set forth in this chapter. Prior to taking independent action, the HCEC shall provide notice in writing to the MPRC that it intends to take independent action.

(7) Notice of Final Proposed Action

- (A) The Notice of Final Proposed Action is a notice to the licensed medical provider informing him or her of the HCEC's decision to take an action pertaining to privileges and possibly employment. Once the HCEC

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decides upon a Final Proposed Action, it must serve the action on the licensed medical provider within five business days of the vote to serve the Final Proposed Action.

(B) Notice of Final Proposed Action shall contain all of the following information:

1. The nature of the Final Proposed Action (e.g., privileges revoked and employment terminated; privileges suspended and licensed medical provider placed on Administrative Time Off).
2. The consequences of the action with regard to privileges, employment, and reporting required by the licensed medical provider's licensing board and/or to the National Practitioner Data Bank (NPDB).
3. The effective date of the action. Insofar as the action pertains to employment, the effective date shall be no fewer than five business days after service of the Notice of Final Proposed Action.
4. The reasons for the action including the acts and/or omissions with which the medical provider is charged.
5. A copy of all material relied upon by the HCEC in making the decision.
6. Notice of the right to respond and request a Pre-Deprivation Hearing before the effective date of the action.
7. Instructions regarding when and how to appeal the HCEC decision.
8. Notice that failing to appeal the HCEC decision shall result in the action taking effect and any corresponding actions such as legally required notifications to the medical provider's licensing board and/or the NPDB.

(C) A copy of the Notice of Final Proposed Action served on the licensed medical provider shall be filed with the State Personnel Board when it impacts any of the terms or conditions of employment, including employment status, grade level, benefits and/or wages.

(8) Pre-Deprivation Hearing Process

(A) A Pre-Deprivation Hearing shall be offered and, if requested within the time specified in the Final Proposed Action, shall be held before the effective date of the Final Proposed Action.

(B) The HCEC shall select the Hearing Officer when the Notice of Final Proposed Action also impacts terms of conditions of employment. The Hearing Officer shall be a licensed physician.

(C) The Hearing Officer shall provide a recommendation to the HCEC following the hearing.

(9) When Final Proposed Action Becomes Effective

(A) After considering the Hearing Officer's recommendation, the HCEC shall either modify the Final Proposed Action or affirm it, as noticed. The Final Proposed Action, insofar as it concerns the employment, shall be considered final and take effect on the date specified in the Final Proposed Action. In addition, where applicable, employment shall be terminated on the effective date of the action if privileges were revoked.

(10) Rescission of Final Proposed Action

(A) In the event the HCEC determines that rescission of the Final Proposed Action is warranted, any summary suspension in effect shall be immediately terminated and a written notice shall be sent to the subject medical provider as well as, if necessary, a supplemental report to the applicable licensing board, and the peer review proceedings shall end.

References

- *Plata v. Newsom, et al.*, U.S. District Court for the Northern District of California, Case No. C01-1351 JST
- California Constitution, Article VII, Public Officers and Employees
- California Business and Professions Code, Division 2, Chapter 1, Article 11, Section 800, *et seq.*
- California Civil Code, Division 1, Part 2.6, Section 56, *et seq.*
- California Evidence Code, Division 9, Chapter 3, Section 1157
- California Government Code, Title 2, Division 5, Part 2, Chapter 1, Section 18577
- California Government Code, Title 2, Division 5, Part 2, Chapter 2, Section 18701
- California Code of Regulations, Title 2, Division 1, Chapter 1, Sections 1-549.74
- California Code of Regulations, Title 15, Division 3, Chapter 1, Subchapter 5, Article 2, Section 3409, Gratuities and Section 3413, Incompatible Activity
- California Code of Regulations, Title 22, Division 5, Chapter 1, Article 7, Section 70703, Organized Medical Staff

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- California Code of Regulations, Title 22, Division 5, Chapter 12, Article 1, Section 79531, Governing Body
- *Skelly v. State Personnel Board* (1975) 15 Cal. 3d 194
- Health Care Department Operations Manual, Chapter 1, Article 4, Section 1.4.6, Licensed Medical Provider Credentialing and Privileging
- Health Care Department Operations Manual, Chapter 1, Article 4, Section 1.4.12, Formal Appeal Judicial Review Committee
- Meeting Procedures: Parliamentary Law and Rules of Order for the 21st Century, James Lochrie, 2003

Revision History

Effective: 12/2017