

1.4.11 Peer Review Formal Investigation

(a) Procedure Overview

This procedure sets forth the process for conducting Peer Review Formal Investigations into the clinical performance and/or conduct of a medical provider pursuant to allegations that the medical provider's clinical performance or conduct falls below the applicable standard of care. Peer Review Formal Investigations are impartial fact-finding reviews.

- (1) Peer Review Formal Investigations into clinical practice concerns involving quality of care issues including, but not limited to, patient care and/or decision-making shall be conducted by a provider of the same discipline and to the extent possible the same licensure as the subject medical provider.
- (2) Peer Review Formal Investigations into professional misconduct concerns including, but not limited to, disruptive conduct, behavior, or ethical issues may be conducted by a clinical provider of the same discipline and licensure as the subject medical provider or by a non-clinical investigator. A non-clinical investigator shall not reach any conclusions or make any findings regarding issues involving clinical decision-making, patient care decision-making, and/or direct patient care issues which involve clinical decision-making.
- (3) Peer Review Formal Investigations require written notification to the subject medical provider.

(b) Responsibility

The Medical Peer Review Committee (MPRC) is responsible for requesting a Peer Review Formal Investigation, overseeing the progress of the investigation, analyzing the information provided in the investigation report, and preparing a Final Proposed Action.

(c) Procedure

(1) Basis for Peer Review Formal Investigation

(A) A Peer Review Formal Investigation shall be initiated when suspected substandard clinical practices and/or professional misconduct occurs which is reasonably likely to be detrimental to patient safety or the delivery of health care including, but not limited to, the following:

1. Failure to Perform Required Standards of Care. Failure to deliver care that is consistent with the degree of care, skill, and learning expected of a reasonable and prudent licensed medical provider acting in the same or similar circumstances (e.g., accuracy of diagnosis, appropriateness of therapy, timely and appropriate consultation, resource management and length of stay, timely transfer as needed for severity and acuity of illness, or medical decision-making).
2. Disruptive Conduct. Failure to work in harmony with others or evidence of disruptive behavior or conduct of such serious nature as to be detrimental to or pose a threat to patient care.
3. Unethical Conduct. Unethical behavior that is detrimental to patient care and/or undermines a culture of safety.
4. Failure to Practice within Known Competencies. Electing to engage in care practices requiring skills or knowledge beyond those possessed by the medical provider in willful disregard of the limits of the licensed medical provider's competencies.
5. Failure to Notify. Failing to notify appropriate authorities (e.g., management or MPRC) that substandard care is being provided by another individual or that circumstances exist in particular instances that may result in preventing access to care or the delivery of appropriate levels of care by any individual.

(B) Pursuant to Health Care Department Operations Manual, Chapter 1, Article 4, Section 1.4.9, Safety Assessment, Summary and Automatic Privilege Modification, all Safety Assessment MPRC determinations resulting in a finding that a licensed medical provider poses an immediate risk or threat to patient safety shall trigger a Peer Review Formal Investigation into the underlying basis of the Safety Assessment as well as the overall clinical performance of the subject medical provider.

(2) Peer Review Formal Investigation Process

(A) Within five business days of the MPRC decision to initiate a Peer Review Formal Investigation, the following shall occur:

1. The MPRC Chairperson shall assign an investigator depending upon the type of performance or conduct at issue. The Professional Practice Evaluation Support Unit (PPESU) shall inform the investigator of the nature of the case and the type of investigation to be conducted.

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2. A Notice of Pending Peer Review Formal Investigation notification letter shall be personally served or served by overnight mail to the last known address of the licensed medical provider with a Proof of Service and return receipt requested. The notification shall include copies of all documents relied upon by the MPRC in making the determination that triggered the Peer Review Formal Investigation.
 3. A copy of the Notice of Pending Peer Review Formal Investigation shall be sent to the institutional Chief Executive Officer (CEO), Chief Medical Executive (CME), Chief Physician and Surgeon (CP&S), and Regional Deputy Medical Executive (RDME).
- (B) The Peer Review Formal Investigation may consist of one or more of, but is not limited to, the following:
1. An examination of documents relating to the event in question.
 2. A review of the licensed medical provider's patient charts to assess either overall quality of clinical care, a more focused aspect of the quality of clinical care, or a combination of both as deemed appropriate based on the clinical practice issue(s).
 3. An interview with the subject medical provider.
 4. Interviews with staff possessing knowledge about the licensed medical provider's clinical performance or conduct issues in question.
- (C) The subject medical provider shall be offered an opportunity to provide a response to the allegations outlined in the investigative report through a scheduled interview with the reviewer(s).
1. The licensed medical provider may be accompanied by a representative of his/her own choosing who shall not disrupt or interfere with the interview. The licensed medical provider or the investigator may end the interview at any time.
 2. Both the investigator and the licensed medical provider may record the interview.
- (D) The investigator shall analyze all reported incidents or cases for the following factors if relevant and as appropriate for the investigator's background:
1. Clinical management.
 2. Timeliness of clinical interventions.
 3. Adherence to the department's critical pathways and/or other established guidelines, or clinically appropriate care and evaluation of any variations.
 4. Interviews with staff possessing knowledge about the licensed medical provider's clinical practices.
 5. Health record documentation.
 6. Follow-up case management.
 7. Professional conduct.
 8. Other alleged disruptive conduct.
 9. Allegations of ethical violations.
 10. Patterns of practice.
 11. Skills, knowledge, training, and experience.
 12. Any impediments (e.g., inability to get test results back or lack of access to patient) to the delivery of appropriate types and levels of care.
 13. Possible physical or mental impairment of the licensed medical provider.
 14. Other factors as requested by the MPRC or which appear relevant to the investigator.
- (E) The investigator shall complete the Peer Review Formal Investigation and issue a report within the timeframe ordered by MPRC. The investigation report shall contain the investigator's factual findings and shall include the following:
1. All documents and other evidence to support the findings.
 2. In cases involving clinical judgment and direct patient care, clear explanations as to why the clinical performance deviates from or adheres to the applicable standard of care.
- (F) A copy of the investigation report shall be sent to the licensed medical provider at his/her last known home address by overnight mail with a return receipt requested, and one copy shall be sent to the institution's CEO, CME, CP&S, and RDME.

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- (G) The licensed medical provider shall have ten calendar days from service of the investigation report to submit a written rebuttal to the MPRC via the PPESU via email to: mprcsupport@cdcr.ca.gov. In the absence of email availability, the written rebuttal shall be sent to:

CCHCS
P.O. Box 588500
Elk Grove, CA 95758

Attn: Professional Practice Evaluation Support Unit, Bldg. E

- (H) Upon expiration of the licensed medical provider's time to submit a rebuttal to the investigation report, the matter shall be calendared for MPRC review and discussion at the next regularly scheduled MPRC meeting. The MPRC shall review the investigator's report and any rebuttal submitted by the licensed medical provider.
- (I) The MPRC may take any of the following actions in response to the investigative report and the licensed medical provider's rebuttal, if any:
1. Request additional information by a specified date.
 2. Take remedial action including, but not limited to:
 - a. Education.
 - b. Proctoring.
 - c. Performance monitoring.
 - d. Referral for physical or mental evaluation and/or treatment.
 3. Modify or restrict clinical privileges including, but not limited to, restricting privileges to prescribe particular medications and/or to perform particular procedures.
 4. Issue letters of admonition, censure, reprimand, or warning; although nothing herein shall be deemed to preclude the licensed medical provider's direct supervisor from issuing informal written or oral warnings outside of the mechanism for corrective action, nor shall it preclude the hiring/contracting authority from taking adverse action.
 5. Take no action against the medical provider.
 6. Suspend privileges.
 7. Revoke privileges.
- (J) Upon voting to conclude a Peer Review Formal Investigation, the MPRC shall send its recommendation(s) to the HCEC. The recommendation shall include a chronology of the major events in the peer review process and all supporting documents considered when choosing the recommendation. If the recommendation is for a privilege modification of any kind, such as a suspension or a revocation of privileges, the recommendation shall be in the form of a Final Proposed Action.
- (K) The MPRC shall maintain all materials regarding the matter including copies of all materials provided to the HCEC.

References

- Federal Health Care Quality Improvement Act of 1986, United States Code, Title 42, Section 11101
- *Plata v. Newsom, et al.*, U.S. District Court of the Northern District of California, Case No. C01-1351 JST
- *Plata Physician Professional Clinical Practice Review, Hearing and Privileging Procedures Pursuant to Order Approving, With Modifications, Proposed Policies Regarding Physician Clinical Competency, July 9, 2008; Plata v. Newsom, et al.* Federal Court Case No. C01-1351 published September 4, 2008, Court ordered procedures
- California Constitution, Article VII, Public Officers and Employees
- California Business and Professions Code, Section 800, *et seq.*
- California Evidence Code, Division 9, Chapter 3, Section 1157
- Health Care Department Operations Manual, Chapter 1, Article 3, Section 1.3.4, Health Care Executive Committee
- Health Care Department Operations Manual, Chapter 1, Article 4, Section 1.4.9, Safety Assessment, Summary and Automatic Privilege Modification

Revision History

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