

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

**1.4.12 Formal Appeal Judicial Review Committee**

**(a) Procedure Overview**

This procedure sets forth the process for appealing a Final Proposed Action pertaining to privileges and/or employment to the Judicial Review Committee (JRC).

**(b) Procedure**

**(1) Appealing the Final Proposed Action**

(A) Final Proposed Actions pertaining to privileges and/or employment must be appealed in writing and filed with the State Personnel Board (SPB) within 30 calendar days of service of the Notice of Final Proposed Action.

1. An appeal of a Final Proposed Action is an appeal of the privileging action. It is not an appeal of the employment action since the employment action is automatically determined by the disposition of the privileging action.

2. Appeals shall be made in writing and must be delivered or sent to:

Appeals Division  
State Personnel Board  
801 Capitol Mall  
Sacramento, CA 95814

3. The licensed medical provider shall also serve a copy of the appeal to the following address:

California Correctional Health Care Services  
P.O. Box 588500  
Elk Grove, CA 95758

Attn: Professional Practice Evaluation Support Unit, Bldg. E

(B) Failing to timely appeal shall be deemed to be a failure to exhaust administrative remedies and a waiver of all rights to challenge the Final Proposed Action before an administrative or judicial tribunal including, but not limited to, the Judicial Review Committee (JRC), the SPB, or a court of law.

(C) The parties shall, notwithstanding Business and Professions Code, Section 809.3(c), be represented by the person(s) of their own choosing including, but not limited to, an attorney.

**(2) Time and Place for Hearing before the Judicial Review Committee**

(A) The SPB shall schedule (or cause to be scheduled) a hearing before an Administrative Law Judge (ALJ) and the JRC within 30 calendar days of the SPB's receipt of the notice of appeal. The SPB shall serve notice to the parties of the time, place, and date of the hearing as required by Business and Professions Code, Section 809.1(c)(2).

1. State-employed ALJs shall preside over the hearings only after receiving special training in medical hearings.

2. Scheduling a hearing date shall be as set forth in Business and Professions Code, Section 809.2(h), which generally states, unless extended for good cause, the date for commencement of the hearing shall not be more than 60 calendar days after SPB's receipt of the appeal.

**(3) Conduct of Proceedings – Generally**

(A) An ALJ shall administer pre-hearing and hearing processes under terms and conditions ordinarily applicable to SPB disciplinary action hearings to ensure constitutionally appropriate due process. Hearing rights include, but are not limited to:

1. Being provided with all information made available to the finder of fact.

2. Having a record made of the proceedings (excluding deliberations) made available to both parties at their own expense.

3. Calling, examining, and cross-examining witnesses.

4. Presenting and rebutting relevant evidence.

5. Submitting an oral or written statement at the close of the hearing.

**(4) Confidentiality**

(A) To the extent Evidence Code, Section 1157 is applicable on its own terms, confidentiality shall apply to SPB and JRC proceedings and records.

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**(5) Role of Administrative Law Judge**

- (A) The ALJ shall endeavor to ensure all participants have a reasonable opportunity to be heard and to present relevant oral and documentary evidence in an efficient and expeditious manner and that proper decorum is maintained.
- (B) The ALJ shall have the authority and discretion to make all rulings on questions pertaining to matters of procedural law (e.g., the admissibility of evidence).
- (C) The ALJ shall prepare a proposed decision concerning affirmative defenses (i.e., unlawful retaliation, unlawful bias, unlawful discrimination, or conflict of interest).
- (D) The ALJ may also submit his/her own recommendations to the SPB regarding whether there is substantial evidence to support the JRC's decision.
- (E) If the ALJ determines that either side at the hearing is not proceeding in an efficient and expeditious manner, the ALJ may take such discretionary action as warranted by the circumstances.
- (F) The ALJ may participate in the JRC deliberations when requested to do so by the JRC. However, clinical competency and privileging determinations as well as employment decisions based on such determinations shall be made exclusively by the JRC.
- (G) The ALJ shall not be entitled to vote, comment, or otherwise advise any person or entity regarding such matters as the merits of the case and remedy pertaining to privileges and employment decisions based on privileging conclusions and finding of facts relating to the standard of care. This prohibition does not preclude the ALJ from submitting his/her written recommendations to the SPB regarding whether there is substantial evidence to support the JRC's decision.

**(6) Role of Judicial Review Committee**

- (A) The scope of the JRC's authority is by majority vote to determine by a preponderance of the evidence whether the nature of the action pertaining to privileges as set forth in the Notice of Final Proposed Action is reasonable and warranted (Business and Professions Code, Section 809.3(b)(3)) and whether the action pertaining to employment is therefore just and proper based on privileging conclusions and findings of fact relating to the standard of care.
- (B) All factual issues including determining the sufficiency of evidence, which pertain to privileging and, therefore, employment determinations based on privileging conclusions and findings of fact relating to the standard of care, shall be decided by a JRC consisting of three physicians.
- (C) The ALJ may assist the panel of physicians in writing a decision that is grounded in the evidentiary record as described above.
- (D) The JRC decision shall be based on the evidence introduced at the hearing including logical and reasonable inferences from the evidence and the testimony.
- (E) The JRC may sustain, modify, or reject the privileging and employment actions based on privileging conclusions and findings of fact relating to the standard of care.

**(7) Time and Content of Decisions**

- (A) The JRC shall render a written decision within 30 calendar days after submission of the case.
  - 1. The JRC decision shall contain a concise statement of the reasons in support of the decision, including findings of fact and conclusions articulating the connection between the evidence produced at the hearing and the conclusion reached (Business and Professions Code, Section 809.4(a)(1)).
  - 2. JRC decisions concerning privileges and employment shall be based on whether the appellant medical provider's acts and/or omissions constitute a failure to meet the standard of care as defined in this procedure.
- (B) In matters adversely impacting employment status, grade levels, benefits, and/or wages, the written JRC decision shall be available to the ALJ within 30 calendar days.
- (C) The ALJ shall complete preparation of his/her written proposed decision regarding any affirmative defenses raised at hearing and recommendations to the SPB regarding whether there is substantial evidence to support the JRC's decision.
- (D) The JRC's decision, the ALJ's proposed decision, and the ALJ's substantial evidence recommendation shall be delivered to the SPB and simultaneously served on the parties within 60 calendar days after submission of the case.
- (E) In matters that do not adversely impact employment status, grade levels, benefits, and/or wages, the SPB shall serve the parties with the JRC's decision within 30 calendar days after submission of the case.

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**(8) Judicial Review Committee Selection for Hearing**

- (A) The SPB shall request a JRC pool of at least five primary care physicians through the California Medical Association Institute of Medical Quality (Institute). The Institute shall be asked to provide the names of physicians familiar with correctional medicine to the extent reasonably possible.
1. In any matter concerning a non-primary care specialist, the Institute shall provide the names of three licensed practitioners in that area of specialty so that one may be selected as the third JRC member instead of a primary care physician.
  2. In the event that the Institute is unwilling or unable to provide this pool of independent physicians, the Health Care Executive Committee (HCEC) and the Union of American Physicians and Dentists will work together to establish an alternative method of selecting a physician pool from which the JRC will be selected.
  3. In matters not involving specialty care medical providers, the appellant medical provider shall select one JRC member from the primary care physician pool and the HCEC shall select one JRC member from the primary care physician pool. The HCEC and the appellant medical provider shall then each alternately strike one name from the five remaining primary care JRC nominees until only one is left, with the first strike determined by coin toss.
  4. In matters involving specialty care medical providers, the subject medical provider shall select one JRC member from the pool and the HCEC shall select one JRC member from the primary care physician pool. The HCEC and the appellant medical provider shall then each alternately strike one name from the list of specialty physicians and the last remaining specialist shall serve as the third JRC member. The first to strike shall be determined by coin toss.
- (B) JRC members shall be subject to voir dire pursuant to Business and Professions Code, Section 809.2(c), except that it shall apply to both parties rather than just the appellant medical provider.

**(9) State Personnel Board Scope and Standard of Review**

- (A) The JRC decision shall be final and binding upon the parties and not subject to SPB review if the matter only concerns privileges (e.g., corrective measures including, but not limited to, privilege restrictions and measures that do not adversely impact employment status, grade level, benefits, and/or wages.)
- (B) The SPB shall only review JRC decisions adversely impacting employment status, grade levels, benefits, and/or wages. This review shall be limited to whether there is substantial evidence to support the JRC decision.
- (C) The SPB shall make its decision based on the record and will not conduct a new trial.
1. The SPB shall apply the substantial evidence standard when reviewing JRC decisions. If the SPB concludes there is substantial evidence that the appellant medical provider's performance or conduct falls below the applicable standard of care, the JRC's privileging and employment decisions shall be affirmed.
  2. If the SPB concludes there is not substantial evidence, it shall remand the matter to the JRC for reconsideration along with a statement of the reasons. A copy of the SPB's remand decision shall be served upon the parties within three business days after the SPB makes its remand decision.
- (D) The SPB shall complete its review and render a final decision within 45 days of receiving the JRC decisions. A copy of the SPB's final decision shall be served upon the parties within three business days after the SPB makes its final decision.

**(10) Licensing Actions**

- (A) In those cases where privileges have been automatically suspended or revoked due to a disciplinary action against the medical provider's license by the Medical Board of California where there has been a corresponding non-punitive termination, SPB review, if requested, shall be limited to the question of whether the action against the license occurred.

**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

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- 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

**Revision History**  
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