

EMERGENCY

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2024-1224-02	EMERGENCY NUMBER Edw
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For use by Office of Administrative Law (OAL) only

OFFICE OF ADMIN. LAW 2024 DEC 24 PM 12:34	
NOTICE	REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY Department of Corrections and Rehabilitation	AGENCY FILE NUMBER (If any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Health Care Allegations of Staff Misconduct	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 3999.239
	AMEND
TITLE(S) 15	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON Robin Hart	TELEPHONE NUMBER (916)896-6780	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Robin.Hart@cdcr.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.		For use by Office of Administrative Law (OAL) only
SIGNATURE OF AGENCY HEAD OR DESIGNEE Designated by: Jeffrey Macomber	DATE 12/24/2024	
TYPED NAME AND TITLE OF SIGNATORY Jeff Macomber, Secretary, Department of Corrections and Rehabilitation		

TEXT OF PROPOSED REGULATIONS

In the following, ~~strikethrough~~ indicates deleted text and underline indicates added text.

California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs, and Parole

Chapter 2. Rules and Regulations of Health Care Services

Subchapter 2. Patient's Entitlements and Responsibilities

Article 5. Health Care Grievances

Section 3999.231 Health Care Staff Complaints is amended:

3999.231 Health Care Staff complaints

(a) Health care grievances determined to be health care staff complaints after receiving a clinical triage shall be processed pursuant to Subchapter 2, Article 5, 1 and not as a citizen's complaint.

Section (b) through (k) remain unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act, Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; Section 35.107, Title 28, Code of Federal Regulations; Section 1013(a), California Code of Civil Procedure; *Armstrong v. Newsom* (No. C-94-2307-CW), U.S. District Court, Northern District of California; *Coleman v. Newsom* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.

Article 5.1 Allegations of Misconduct Against Health Care Staff is adopted:

Article 5.1 Allegations of Misconduct Against Health Care Staff

3999.239 Allegations of Misconduct Against Health Care Staff

(a) Definitions. For the purpose of Subchapter 2, Article 5.1, the following definitions apply:

(1) Adverse Action means a punitive action taken by a hiring authority to discipline an employee as set forth in section 3392.3.

(2) Allegations of Staff Misconduct (ASM) Screening Team means the departmental staff that identify allegations of staff misconduct (ASM) related to health care, excluding ASM referred to the Office of Internal Affairs (OIA) by the Centralized Screening Team (CST).

(3) Centralized Screening Team (CST) means the team responsible for screening all grievances, reasonable accommodation requests, and allegations of staff misconduct, and then routing the claim.

(4) Corrective Action means a non-punitive action taken by a supervisor to assist an employee to improve work performance, or correct behavior or conduct as set forth in section 3392.2.

(5) Health Care Allegation Examiner means departmental staff trained in techniques to conduct inquiries and research into allegations of staff misconduct.

(6) Health Care Correspondence and Appeals Branch (HCCAB) means the office responsible for statewide oversight of the grievance program and the headquarters' level health care grievance appeal review.

(7) Health Care Grievance Office (HCGO) means the office responsible for coordinating the institutional level health care grievance review.

(8) Hiring Authority (HA) means the appointing power may act, or delegate the power to act, as the hiring authority. The hiring authority has the power to hire, initiate the investigation process by submitting a confidential request for internal affairs investigation or approval for direct adverse action, discipline, and dismiss staff. The power to act as a hiring authority may be delegated to the following classifications: Undersecretary; Assistant Secretary; General Counsel; Chief Deputy General Counsel; Executive Officer; Chief Information Officer; Director; Deputy Director; Associate Director; Assistant Deputy Director; Chief, Office of Correctional Safety; Chief, Office of Labor Relations; Warden; Superintendent; Health Care Chief Executive Officer; Regional Health Care Administrator; Regional Parole Administrator; Parole Administrator; Superintendent of Education; Assistant Superintendent of Education; Administrator at the Richard A. McGee Correctional Training Center for Correctional Officer Cadets; or any other person authorized by the appointing power.

(9) Office of Internal Affairs (OIA) means the entity with authority to investigate allegations of employee misconduct.

(10) Staff misconduct means health care staff behavior or activity that violates a law, regulation, policy, or procedure, or is contrary to an ethical or professional standard.

(b) Right to Report.

(1) Any person may report an ASM against health care staff when they believe the behavior resulted in a violation of law, regulation, policy, or procedure, or actions contrary to an ethical or professional standard. Such persons shall be referred to as the Reporting Party (RP).

(2) Departmental staff shall not retaliate against any RP for submitting an ASM.

(3) The Department shall ensure all ASM are documented, examined, and addressed with discipline imposed including referrals for criminal prosecution, when warranted, as provided in this Article, and Chapter 1, Subchapter 5, Article 2.

(c) Submission.

(1) An ASM against health care staff may be submitted by any incarcerated person using a CDCR 602 HC, Health Care Grievance, as incorporated by reference in section 3999.99, pursuant to section 3999.226.

(2) An ASM against health care staff may be submitted by a supervised person, member of the public, or departmental staff using written correspondence.

(A) The RP shall document clearly all information known and available to them regarding the ASM including identification of any involved health care staff including last name, first initial, title or position, a description of their involvement and date(s).

(B) If the RP does not have information to identify health care staff, the RP shall provide all other available information that may assist in processing the ASM, including but not limited to, physical description, location, and time of alleged incident.

(3) Verbal ASM.

(A) Departmental staff shall provide the RP with information on how to submit ASM in writing as follows:

1. Members of the public or supervised persons shall submit via:

a. Email to: m_CCHCSPHCI@cdcr.ca.gov; or

b. Mail to: Health Care Correspondence and Appeals Branch, Policy and Risk Management Services, P.O. Box 588500, Elk Grove, CA 95758.

(d) Receipt and Routing.

(1) After clinical triage, ASM received on CDCR 602 HC shall be forwarded by the institution Health Care Grievance Office to the Centralized Screening Team (CST) within three business days of receipt.

(2) ASM received from the public shall be forwarded by the Health Care Correspondence and Appeals Branch to the CST within three business days of receipt.

(e) Screening.

(1) Following CST review pursuant to Chapter 1, Subchapter 5.1, Article 1.5, the ASM Screening Team shall review the ASM within two business days.

(A) If alleged misconduct is identified and if true could result in:

1. Adverse action, the ASM Screening Team shall refer back to the CST for elevation to OIA for processing pursuant to Chapter 1, Subchapter 5.1, Article 1.5.

2. Corrective action, the ASM Screening Team shall refer to a Health Care Allegation Examiner (HCAE) to process pursuant to section 3999.239(f).

(B) If alleged misconduct is identified and does not involve an incarcerated person or supervised person (i.e., staff on staff, staff toward citizen), refer to the HA.

(2) The ASM Screening Team shall refer allegations of substandard clinical performance to the applicable clinical program area.

(3) The ASM Screening Team shall send a written acknowledgement to the RP within five business days of screening.

(f) Review.

(1) ASM shall be assigned to a HCAE who is responsible for:

(A) Conducting a confidential ASM examination and completing a confidential allegation report (CAR). If the HCAE discovers evidence of misconduct that if true could result in adverse action, the HCAE shall suspend the ASM examination, document the evidence in a CAR, and refer back

to the CST for consideration to elevate to OIA for processing pursuant to Chapter 1, Subchapter 5.1, Article 1.5.

(g) CAR Approval.

(1) The ASM Management Team, at the level of Staff Services Manager II or above, shall:

(A) Ensure the CAR is sufficient, complete, and unbiased.

(B) Recommend a finding for each allegation and refer to the HA for determination.

1. The hiring authority shall make a determination of findings pursuant to Section 3392.1 and notify the ASM Management Team within 14 business days.

(C) Ensure cases are reviewed and closed within 90 business days from the date ASM was identified by the ASM Screening Team.

(h) Multiple submissions of duplicate allegations. When there are multiple submissions of the same ASM from different incarcerated persons, or supervised persons the ASM shall be combined and conducted as a single examination.

(i) A CAR shall be completed on ASM received against contract or registry health care personnel, as outlined in this Article.

(1) Upon completion of the CAR, ASM Management shall review and refer to health care Direct Care Contracts Section to consider further action related to the contract.

(j) Confidentiality.

(1) The CAR is a confidential document and shall only be seen by those involved in the ASM process as outlined in this Article.

(2) The CAR shall not be released without subpoena or court order, or without approval from the Department's Office of Legal Affairs.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, 5058.4, Penal Code; *Armstrong et al. v. Newsom et al.*, United States District Court for the Northern District of California, Court Case number 94-cv-02307-CW; *Madrid v. Woodford*, Special Masters Final Report Re: Department of Corrections Post Powers Investigations and Employee Discipline; Case No. C90-3094-T.E.H; *Madrid v. Woodford*, Order; and Case No. C90-3094-T.E.H. Class Action.