Ambulatory Care Network HEALTH SERVICES • LOS ANGELES COUNTY *Quality • Compassion • Responsibility* **TITLE: Hearing and Appellate Review** **DIVISION: Ambulatory Care Network** **SERVICE AREA/UNIT: Medical Administration**	**Policy & Procedure Number**	**ACN** **PO-03.004**
	Origination Date:	9/25/2014
	Revision Date:	10/26/2017
	Review Date:	11/29/2017
	Approved By:	ACN P&P

1.0 PURPOSE:

To outline the appropriate and available recourse for practitioners who are denied, lose or otherwise have their privileges reduced for a medical disciplinary cause or reason.

2.0 POLICY:

Practitioners who receive notice of an action or proposed action that is reportable under California Business and Professions Code Section 805, to deny, lose, or otherwise reduce privileges, have the hearing and appellate review rights set forth in this policy.

3.0 DEFINITIONS:

3.1 "**Medical disciplinary cause or reason**" refers to an aspect of a practitioner's competence or professional conduct, which is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

3.2 "**Body whose decision prompted the hearing**" means the person who, or body which, rendered the decision that resulted in a hearing being requested.

3.3 "**Notice**" means a written communication handed to the individual or sent by certified or registered mail, return receipt requested.

3.4 "**Person who requested the hearing**" means the provider whose privileges have been decreased, denied, suspended, terminated, or made subject to any other action or recommendation that requires submission of a report pursuant to California Business and Professions Code Section 805.

4.0 PROCEDURE:

4.1 Request for a Hearing

1. A practitioner has thirty (30) calendar days following the date of receipt of notification of denial, loss or reduction of privileges to request a hearing. Hearing requests shall be made to the facility Medical Director and shall be in writing, delivered either in person or by certified or registered mail, return receipt requested. The practitioner shall be permitted to be represented by

an attorney or another person of the practitioner's choice. The Hearing Committee cannot have an attorney if the practitioner does not have attorney representation. The body prompting the hearing may select a representative to present the decision and supporting materials to the Hearing Committee.

2. If the practitioner does not request a hearing within the time frame and in the manner set forth above, he/she shall be deemed to have waived his/her right to a hearing and to any appellate review to which he/she might otherwise have been entitled pursuant to this policy, and to have accepted the recommendation, decision, or action involved.

3. Any one or more of the following actions may constitute grounds for a hearing:

   a. Denial of requested privileges.

   b. Involuntary reduction of privileges.

   c. Suspension of privileges.

   d. Termination of privileges.

   e. Requirement of consultation.

   f. Any other action which requires a report to be made to the Medical Board of California, National Practitioner Data Bank, or other appropriate State licensing agency pursuant to California Business and Professions Code section 805 by following the instructions outlined in the Medical Board of California Health Facility Reporting Form ENF-805 (Attachment A).

4. Upon receipt of a request for a hearing, the Medical Director shall deliver such request to the ACN Credentials & Privileging Committee (ACN C&PC) within fifteen (15) calendar days. The ACN C&PC shall, within fifteen (15) calendar days, schedule or arrange for a hearing which is to occur within sixty (60) calendar days from receipt of the request by the Medical Director. The Medical Director shall appoint a Hearing Committee of no less than three practitioners with full privileges who did not actively participate in the action being appealed. At least fifty-one percent of the participants must be peers of the practitioner requesting the appeal. If necessary, practitioners from other ACN sites may be appointed to the Hearing Committee.

5. Changes in the timelines may be permitted by the Hearing Committee only on showing of good cause.

6. The Hearing Committee shall render a decision within fifteen (15) calendar days of the final adjournment of the hearing.

4.2. Hearing Procedure

1. Under no circumstances shall the hearing be conducted without the personal presence of the person requesting the hearing unless she/he has waived such appearance, in writing, or has failed without good cause to appear after appropriate notice.

2. The presiding officer is the Chair of the Hearing Committee, as appointed by the Medical Director. It is the duty of the presiding officer to assure that all

participants in the hearing have a reasonable opportunity to be heard, to present oral and documentary evidence, and that decorum is maintained. He/she shall be the decision maker regarding the conduct of the hearing.

3. The Director of the Los Angeles County Department of Health Services or designee may appoint the Chair of the Hearing Committee at the request of the applicant, or of the Hearing Committee.

4. A record shall be maintained of the hearing, either by certified shorthand or stenographic reporter, or by a recording of the proceedings. The cost of the reporter and transcription is the responsibility of the person making the hearing request.

5. The Hearing Committee shall obtain information, and, if requested, answer questions concerning bias. Any relevant evidence shall be admitted by the presiding officer if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the admissibility of such evidence in a court of law.

6. Reasonable additional time, not to exceed thirty (30) calendar days, shall be granted, if requested, to present written rebuttal of any evidence submitted on official notice.

7. The decision of the Hearing Committee shall be based on the evidence produced at the hearing. Evidence may consist of the following:

    a. Oral testimony of witnesses;

    b. Briefs or memoranda of points and authorities presented in connection with the hearing;

    c. Any materials or files regarding the person who requested the hearing which have been made part of the hearing record;

    d. Any and all applications, references, medical records, and other documents which have been made a part of the hearing record;

    e. All officially noticed matters; and

    f. Any other admissible evidence.

8. The Hearing Committee shall rule against the person who requested the hearing unless it finds that such person has proven, by a preponderance of the evidence, that the action of the body whose decision prompted the hearing was arbitrary, unreasonable, not supported by the evidence, or otherwise unfounded.

4.3. Appeal to Director, Department of Health Services (DHS)

1. Within fifteen (15) calendar days after receipt of the decision of the hearing committee, either the person who requested the hearing or the body whose decision prompted the hearing may request an appellate review by the Director, DHS. Such request shall be to the Director, in writing, and delivered either in person or by certified or registered mail, return receipt requested. If such appellate review is not requested within such period, both sides shall be deemed to have accepted the action involved and it shall thereupon become

final. The written request of appeal shall also include a brief statement of the reasons for appeal.

2. Grounds for appeal after the hearing shall be:

   a. Substantial failure of any person or body to comply with the procedures required by this policy for the conduct of hearing and decisions upon hearings so as to deny due process and a hearing; or

   b. The action taken by the Hearing Committee was arbitrary, capricious, with prejudice, or not supported by substantial evidence.

3. In the event of any appeal to the Director, DHS as set forth in the preceding subsection, the Director shall within fifteen (15) calendar days after receipt of such notice of appeal, schedule and arrange for an appellate review. The Director shall cause the applicant or member to be given notice of the time, place, and date of the appellate review. The date of the appellate review shall not be less than thirty (30) calendar days or more than sixty (60) calendar days from the date of receipt of the request for appellate review. The time for appellate review may be extended by the Director upon a showing of good cause.

4. When an appellate review is requested, the Director, DHS shall appoint an Appeal Board of odd number of not less than five members, one of whom shall be designated by the Director as chair.

5. The proceeding of the Appeal Board shall be in the nature of an appellate hearing based upon the record of the hearing before the Hearing Committee; provided that the Appeal Board may, in its sole discretion, accept additional oral or written evidence subject to the same rights of cross examination provided in the Hearing Committee hearing. The Appeal Board, after its deliberation, shall recommend, in writing, that the Director, DHS affirm, modify or reverse the decision of the Hearing Committee, or refer the matter back to the hearing Committee for further review and recommendation.

6. Within fifteen (15) calendar days after receipt of the recommendations of the Appeal Board, the Director, DHS shall render a final decision in writing and shall deliver copies to the applicant and to the Medical Director in person or by certified or registered mail, return receipt requested. The Director may affirm, modify or reverse the decision of the Appeal Board or in his/her sole discretion, refer the matter back to the Hearing Committee for further review and recommendation.

7. Except where the matter is referred back to the Hearing Committee for further review and recommendation, the final decision of the Director, following the appeal procedure set forth above, shall be effective immediately and shall not be subject to any further review.

8. If the matter is referred back to the Hearing Committee, then the Committee will promptly conduct its review and report back to the Director within thirty (30) calendar days, except as the parties may otherwise stipulate in writing to extend such period. The Director may affirm, modify or reverse the decision of the Hearing Committee, and such decision shall be final and effective immediately and shall not be subject to further review.

9. The final decision shall be in writing and contain the specific reason(s) for the decision. The practitioner's copy of the decision shall be delivered by registered or certified mail, return receipt requested.

10. Except as otherwise provided in this policy, no applicant shall be entitled as a matter of right to more than one appeal to the Director on any single matter which may be the subject of an appeal.

4.4. Exhaustion of Remedies

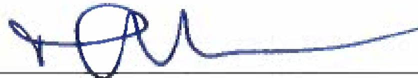
The practitioner shall exhaust all the remedies afforded by this policy before resorting to any legal action.

5.0 ATTACHMENT

Medical Board of California Health Facility Reporting Form (ENF-805)

Prepared by: ACN Credentials & Privileging Committee

Approval:



Date: 12/7/17

Nina J. Park, MD
Chief Executive Officer

P&P History

Date	Department	Policy & Procedure #	Comments	Next Annual Review Due
9/25/2014	ACN	PO-03.004	P&P Committee Approved	9/25/2015
3/3/2016	ACN C&PC	PO-03.004	Policy Revised	3/3/2017
3/17/2016	ACN	PO-03.004	P&P Committee Approved	3/17/2017
10/26/2017	ACN C&PC	PO-03.004	Policy Revised	10/26/2017
11/29/2017	ACN	PO-03.004	P&P Committee Approved	11/29/2017

MEDICAL BOARD OF CALIFORNIA
Central Complaint Unit

HEALTH FACILITY/PEER REVIEW REPORTING FORM
(Required by Section 805 of the California Business & Professions Code)

NOTE: Certain actions, with respect to staff privileges, membership or employment of physicians, podiatrists and physician assistants must be reported to the Medical Board of California when they are imposed or voluntarily accepted for a medical disciplinary cause or reason. Reports on osteopathic physicians, dentists and psychologists should be directed to their respective Boards. Please see the reverse/second page of this form for further information.

******PLEASE PRINT OR TYPE******

REPORTING ENTITY

Please check type of Reporting Entity

- ☐ Health Care Facility or Clinic – §805(a)(1)(A)
- ☐ Health Care Service Plan - §805(a)(1)(B)
- ☐ Professional Society - §805(a)(1)(c)
- ☐ Medical Group or Employer - §805(a)(1)(D)
- ☐ Ambulatory Surgical Center - §805(a)(1)(A)

Name	Telephone #
Chief Executive Officer/Medical Director/Administrator	Chief of Medical Staff
Name of person preparing report	Telephone #

Street address	City	State	Zip code

LICENTIATE

Name	License #

☐ Physician ☐ Podiatrist ☐ Physician Assistant

ACTION TAKEN

Date(s) of Action(s) and Duration (attached additional sheets if necessary)

Type(s) of Action(s) - Check all that apply. CHECK HERE IF THIS IS A SUPPLEMENTAL REPORT ☐

(a) For a medical disciplinary cause or reason:

- ☐ Denial/rejection of application for staff privileges
- ☐ Denial/rejection of application for membership
- ☐ Termination or revocation of staff privileges
- ☐ Termination or revocation of membership
- ☐ Termination or revocation of employment

(b) For a cumulative total of 30 days or more for any 12 month period, and for a medical disciplinary cause or reason:

- ☐ Restriction(s) imposed on staff privileges
- ☐ Restriction(s) imposed on membership
- ☐ Restriction(s) imposed on employment
- ☐ Restriction(s) voluntarily accepted on staff privileges
- ☐ Restriction(s) voluntarily accepted on membership
- ☐ Restriction(s) voluntarily accepted on employment

If staff privileges were restricted, list specific restrictions imposed or voluntarily accepted:

(c) Following notice of an impending investigation based on information indicating medical disciplinary cause or reason:

- ☐ Licentiate resigned from staff
- ☐ Licentiate resigned from membership
- ☐ Licentiate resigned from employment
- ☐ Licentiate took leave of absence from staff
- ☐ Licentiate took leave of absence from membership
- ☐ Licentiate took leave of absence from employment

(d) For a summary suspension that remains in effect for a period in excess of 14 days for a medical disciplinary cause or reason:

- ☐ Imposition of summary suspension on staff privileges
- ☐ Imposition of summary suspension on employment
- ☐ Imposition of summary suspension on membership

DESCRIPTION OF ACTION: Attach additional sheet(s) describing the facts and circumstances of the medical disciplinary cause or reason and any other relevant information related to the action taken, including, but not limited to, the number of cases reviewed, time frame covered, any patient deaths involved, any malpractice filings as a result of the physician's actions, any expert/peer opinions obtained, etc.

Signature Date
Chief Executive Officer/Medical Director/Administrator

Signature Date
Chief of Medical Staff

2005 Evergreen Street, Suite 1200, Sacramento, CA 95815-3831 (916) 263-2528 FAX: (916) 263-2435 www.mbc.ca.gov

ADDITIONAL INFORMATION

To complete this form, for definition of terms, when, how, and who should report, please refer to Section 805 of the California Business and Professions Code. You may access this information via www.leginfo.legislature.ca.gov under California Law, Business and Professions Code.

Once completed, please submit this form to:

Medical Board of California
Central Complaint Unit
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-3831

PLEASE NOTE: Section 805(k) of the California Business and Professions Code states: "A willful failure to file an 805 report by any person who is designated or otherwise required by law to file an 805 report is punishable by a fine not to exceed one hundred thousand dollars ($100,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file an 805 report is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. A violation of this subdivision may constitute unprofessional conduct by the licentiate. A person who is alleged to have violated this subdivision may assert any defense available at law. As used in this subdivision, 'willful' means a voluntary and intentional violation of a known legal duty."

Section 805(l) of the California Business and Professions Code states: "Except as otherwise provided in subdivision (k), any failure by the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report, shall be punishable by a fine that, under no circumstances shall exceed fifty thousand dollars ($50,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file an 805 report is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. The amount of the fine imposed, not exceeding fifty thousand dollars ($50,000) per violation, shall be proportional to the severity of the failure to report and shall differ based upon written findings, including whether the failure to file caused harm to a patient or created a risk to patient safety; whether the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report exercised due diligence despite the failure to file or whether they knew or should have known that an 805 report would not be filed; and whether there has been a prior failure to file an 805 report. The amount of the fine imposed may also differ based on whether a health care facility is a small or rural hospital as defined in Section 124840 of the Health and Safety Code."

Section 805(m) of the California Business and Professions Code states: "A health care service plan registered under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that negotiates and enters into a contract with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code, when determining participation with the plan or insurer, shall evaluate, on a case-by-case basis, licentiates who are the subject of an 805 report, and not automatically exclude or deselect these licentiates."

CONFIDENTIALITY

This report is not a waiver of the confidentiality of medical records and committee reports. The contents of this report may be viewed only by those persons specified in Section 800(c) of the Business and Professions Code, except as required by Section 805.5 of the Business and Professions Code.

COPY TO LICENTIATE

A copy of the 805 report, with a cover letter informing the Licentiate of his or her right to submit additional statements or other information pursuant to Section 800(c) of the Business and Professions Code, must be sent by the reporting entity to the Licentiate.

SUPPLEMENTAL REPORT

A supplemental report must be made within thirty (30) days following the date the Licentiate is deemed to have satisfied any terms, conditions, or sanctions imposed as corrective action by the reporting entity.