

CPMG Staff Manual / Professional Review

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The authority for the Group to conduct Professional Review is granted pursuant to federal and state law. Specifically, the Health Care Quality Improvement Act of 1986, found at 42 U.S.C. § 11101 *et seq.*, and the Colorado Professional Review Act, found at § 12-36.5-101, C.R.S., *et seq.*, and implementing regulations.

1. Definitions

- a. **“Administrator”** means the person who is responsible for coordinating all activities relating to any professional review. The Administrator shall be an Associate Medical Director selected by the Executive Medical Director.
- b. **“Adverse Action”** or **“Adversely Affecting”** has the same meaning as found in 42 U.S.C. § 11151(1) and includes reducing, restricting, suspending, revoking, denying, or failing to renew clinical privileges or membership in the Group.
- c. **“Clinical Privileges”** means the authorization by the Group to a practitioner for the provision of health care services, including privileges to practice in any given setting.
- d. **“HPRC”** means the Hearing Peer Review Committee.
- e. **“IPRC”** means the Investigation Peer Review Committee.
- f. **“Official Record”** means all pleadings, evidence, exhibits, and other materials presented to or considered by the reviewing body. The Official Record shall also include findings, recommendations and rulings, if applicable.
- g. **“Practitioner”** means a physician, podiatrist, or other health care professional who is employed by or contracts directly with the Group.
- h. **“Qualified to perform clinical professional review based upon specialty or training”** means shareholders whose clinical practice is similar, but not necessary identical, to the Practitioner under review.
- i. **“Service”** means personal service or by first-class and electronic mail to the address of record with the Group and shall be effective as to the party on the date mailed.

2. Professional Review Process When Evaluating Clinical Competence or Professional Conduct.

- a. **Applicability.** This provision applies to all Practitioners credentialed by the Group, regardless of shareholder status, whose clinical competence or professional conduct is under investigation and, as a result, may be subject to a reportable Adverse Action. For purposes of this Paragraph 2, “professional conduct” means conduct that affects or could affect adversely the health or welfare of a patient.

- b. **Initiation and Administration.** The Administrator shall advise the Practitioner under review that the Board has requested initiation of a professional review of his or her clinical competence or professional conduct. The Administrator, or other person requested by the Board to do so, also shall advise the Board of Directors from time to time regarding the status of the proceedings.
- c. **Investigation Peer Review Committee (IPRC)**
 - i. Upon the Board's determination that a professional review should be initiated, an investigation shall be conducted by an IPRC. The IPRC shall be comprised of not less than three (3) randomly chosen shareholders from among those who are qualified to perform clinical professional review based upon specialty or training. Members of the IPRC do not have to be from the same department or clinical subspecialty as the Practitioner under review.
 - ii. Shareholders may decline to participate as a member of the IPRC only for health reasons. Shareholders will be precluded from participating as a member of the IPRC if the Administrator determines there may be a conflict of interest. Holding an administrative position in the Group shall not constitute a conflict of interest.
 - iii. In conducting its investigation, the IPRC may review any records or documents available to it including, but not limited to, performance evaluations which have been prepared in order to review the Practitioner's performance, and may interview such persons as it deems necessary, including but not limited to the Practitioner who is subject to the professional review. The IPRC is not required to review every available document, or to interview every possible witness, but shall investigate whether there are reasonable grounds for taking action against the Practitioner.
 - iv. Upon the conclusion of its investigation, the IPRC shall prepare written findings and recommendations to submit to the Board. If the IPRC finds that the Practitioner is lacking in qualifications, has provided substandard or inappropriate patient care, or has exhibited inappropriate professional conduct, or should otherwise have his or her participation in the Group restricted, suspended, revoked or terminated, it shall specify such action(s) in its recommendations. Such recommendations shall be approved by at least a two-thirds vote of the IPRC and may include, but need not be limited to, termination of employment or professional services agreement, suspension with or without pay, restriction of privileges, proctoring, review of cases, or any other discipline or corrective action the IPRC deems appropriate.
 - v. The Administrator shall give a copy of the IPRC's findings and recommendations to the Directors of the Board who will be reviewing the investigation and issuing an Initial Decision. The

Board retains the right to accept, modify or reject the proposed findings and recommendations of the IPRC.

- vi. Following review of the IPRC's findings and recommendations, the Board will issue an Initial Decision based upon the investigation of the IPRC. The Initial Decision shall set forth the basis for the decision and the proposed disciplinary action, if applicable.
- vii. The Initial Decision will be served upon the Practitioner and the Group and either party may request a hearing if unsatisfied with the result.

d. Right of Hearing, Notice and Waiver

- i. If the Initial Decision recommends action against the Practitioner, the Administrator shall give the Practitioner written notice of the following:
 - 1. That the Board has proposed that action be taken against the Practitioner for the reasons set forth in the Initial Decision;
 - 2. That the Practitioner has the right to a hearing, and the time limit within which a hearing must be requested shall be no more than thirty (30) days from the date of service;
 - 3. That in connection with the hearing, the Practitioner has the rights set forth in section 2.g.iii below;
 - 4. That in the event the Practitioner does not request a hearing, the Initial Decision of the Board shall become final; and
 - 5. That any final action taken by the Board of Directors will be reported to the appropriate state and federal agencies as required by law.
- ii. If the Practitioner or the Group wishes to appeal the Initial Decision of the Board, a written request for hearing must be delivered to the Administrator no more than thirty (30) days from the date of service.
- iii. In the event a hearing is timely requested, the Administrator shall give the Practitioner and the Group notice of the place, time and date of the hearing, which date shall not be less than thirty (30) days nor more than sixty (60) days from the date of service, unless the parties agree otherwise.
- iv. In the event neither the Practitioner nor the Group request a hearing within thirty (30) days after service of the Initial Decision, the parties shall be deemed to have waived the right to a hearing (and any right to an appeal after the hearing). In such a circumstance, the Initial Decision of the Board shall be considered final and binding.

e. Hearing Peer Review Committee (HPRC)

- i. If a hearing is requested, it shall be conducted by a HPRC. The HPRC shall be comprised of not less than two (2) shareholders

chosen randomly who are qualified to perform clinical professional review based upon specialty or training and a member of the Board of Directors. Members of the HPRC do not have to be from the same department or clinical subspecialty as the Practitioner under review.

- ii. The shareholders and designated Board of Director may decline to participate as a member of the HPRC only for health reasons. Shareholders and the Director will be excluded from participating as a member of the HPRC if the Administrator determines there may be a conflict of interest. Holding an administrative position in the Group shall not constitute a conflict of interest.
- iii. The HPRC members shall select a Chairperson among themselves. The Chairperson shall rule on any procedural disputes before or at the hearing, evidentiary disputes, and otherwise control the course of the hearing and the activities of the HPRC.
- iv. Any person who has participated in the course of the IPRC's investigation shall be disqualified as a member of the HPRC, but such person may participate as a witness at the HPRC hearing.
- v. Either party may challenge any member of the HPRC for bias or impartiality. Any such challenge must be filed with the Administrator within five (5) days of notice of the composition of the HPRC. The Chairperson of the HPRC shall rule on any such challenge, unless the Chairperson is challenged, in which case the Administrator shall rule on the challenge. The mere fact that a member of the HPRC practices in the same specialty, department, or clinic as the Practitioner under review shall not be a valid basis for challenge.

f. Hearing and Prehearing Matters

- i. The parties shall have the right to inspect and copy, at the requesting party's expense, any documentation relevant to the charges which is in the possession or under the control of the other party, and not subject to the attorney-client or other legally recognized privilege. The right to inspect and copy documentation does not extend to information referring to individually identifiable Practitioners, other than the Practitioner who is the subject of the review; except, however, if records relating to other Practitioners have been used in connection with any study of the subject Practitioner, such records shall be made available to the subject Practitioner after the other Practitioner's names or identifying data have been redacted.
- ii. The parties shall exchange lists of witnesses expected to testify and copies of all documents expected to be introduced as soon as reasonably practicable after notice of the hearing, but in no case less than fifteen (15) days before the date of the hearing. Each party shall promptly notify the other party of any change in its list of witnesses.

- iii. The failure by either party to provide access to information at least fifteen (15) days before the hearing shall constitute good cause for a continuance.
- iv. The HPRC Chairperson shall consider and rule on any dispute over requests for information. The Chairperson may impose any safeguards or remedies required to protect the professional review process or that justice requires.

g. Hearing

- i. Failure of the Practitioner to personally appear and participate at the hearing without good cause shall be deemed a waiver of the Practitioner's right to a hearing (and any right to an appeal after the hearing). In such a circumstance, the Initial Decision of the Board shall be final and binding.
- ii. The HPRC shall maintain a record of the hearing by either a certified court reporter or a recording of the proceedings. The cost of any reporter transcript or recording transcription shall be borne by the requesting party. The HPRC shall take testimony under oath or by affirmation under penalty of perjury.
- iii. At the hearing, the parties shall have the following rights:
 - 1. to be present and be represented by legal counsel or any other representative;
 - 2. to call, examine and cross-examine witnesses;
 - 3. to introduce exhibits or other evidence;
 - 4. to be provided with all information made available to the HPRC;
 - 5. to present evidence determined to be relevant by the HPRC, including hearsay, regardless of the admissibility of such evidence in a court of law;
 - 6. to have a record made of the proceedings and to obtain a copy of the record upon payment of any reasonable charges for its preparation; and
 - 7. to submit a written statement in support of their positions at the close of the hearing.
- iv. The HPRC may, in its discretion, question any witness, call additional witnesses, or request additional records, documents, or other materials to be presented for its consideration.
- v. The HPRC may, at its discretion, request each party to submit proposed findings and recommendations.
- vi. The HPRC shall review and consider the investigation of the IPRC, the Initial Decision of the Board and the evidence produced at the hearing. Such evidence may consist of oral testimony of the witnesses, exhibits and other documents and records which are made part of the hearing record, and briefs and written statements presented in connection with the hearing. The HPRC may consider any evidence not previously considered by the IPRC. The HPRC also may consider other instances of concern not considered by the

IPRC, provided notice of such other instances is given to the Practitioner at least thirty (30) days prior to the hearing. The HPRC may grant either party a continuance of the hearing so that such other instances may be considered.

- vii. Upon conclusion of the hearing, the HPRC shall issue written findings and recommendations in the form of a Hearing Decision. If the HPRC finds that the Practitioner is lacking in qualifications, has provided substandard or inappropriate patient care, or has exhibited inappropriate professional conduct, or should be terminated or disciplined for other cause, it shall include the basis of such findings in its decision. In issuing the Hearing Decision, the HPRC may adopt the Initial Decision of the Board as its own, or may issue any different or additional findings and recommendations it deems appropriate. Any findings and recommendations of the HPRC shall be approved by at least a two-thirds vote of the HPRC and may include, but need not be limited to, termination of employment or professional services agreement, suspension with or without pay, restriction of privileges, proctoring, review of cases, or any other discipline or corrective action the HPRC deems appropriate.
- viii. The Administrator shall give a copy of the HPRC's Hearing Decision to the Practitioner and the Group. The Practitioner or the Group may then appeal the Hearing Decision of the HPRC.
- h. Appeal to Three Member Panel of the Board of Directors ("Appellate Body")**
 - i. If either the Practitioner or the Group wishes to appeal the HPRC's Hearing Decision, a written request for appellate review must be received by the Administrator within fourteen (14) calendar days from the date of service of the HPRC's Hearing Decision.
 - ii. If an appellate review is not timely requested by either party, the parties shall be deemed to have waived any right to appeal and the Hearing Decision of the HPRC shall be final and binding.
 - iii. Any written request for appeal shall include the grounds for appeal and a statement of facts in support of the appeal.
 - iv. Any appeal shall be heard by an Appellate Body consisting of not less than three (3) members of the Board, who have not participated in any prior review of the case, including that of the IPRC or the HPRC.
 - v. The Appellate Body shall be bound by the record established during the hearing process. Any matter not presented to or considered by to the HPRC shall be considered waived and outside of the record.
 - vi. Upon receipt of a timely request for appeal, the Practitioner shall be given notice of the time, place and date the matter will be heard which shall be no earlier than thirty (30) days after the request for appeal is received by the Administrator, unless the parties agree

otherwise. The time for appellate review may be extended by the Appellate Body if it deems necessary, or upon agreement of the parties, or for good cause shown.

- vii. The Practitioner shall have the right to be present at the appellate review, to be represented by an attorney or any other representative, and to offer argument on the Practitioner's behalf. Oral argument shall be limited to no more than thirty (30) minutes per party.
- viii. The Practitioner and the Group may submit a written statement to the Appellate Body. Any such statement shall be submitted at least five (5) business days prior to the appellate review.
- ix. After the appellate review is concluded, the Appellate Body shall issue, in writing, a Final Decision affirming, modifying, or reversing the Hearing Decision of the HPRC. The Appellate Body may adopt the HPRC's Hearing Decision as its own Final Decision, or may issue any different decision it deems appropriate. The Final Decision shall include the basis for the outcome.
- x. Any Final Decision by the Appellate Body shall be approved by at least a two-thirds vote. The Final Decision of the Appellate Body and the action taken by the Board in connection therewith shall be final and binding on the Practitioner and the Group.

3. Review Process When Evaluating Shareholder Conduct Not Subject to a Reportable Adverse Action.

- a. This provision is applicable only to shareholders of the Group.
- b. The Board of Directors may, at any time and at its discretion, initiate a professional review action of any shareholder to consider whether the shareholder should be terminated or otherwise disciplined for causes other than clinical competence or professional conduct that affects or could affect adversely the health or welfare of a patient.
- c. Such process shall be consistent with the process outlined above in Section 2, except that the shareholders who are members of the IPRC and the HPRC need not be qualified based upon specialty or training.

4. General Provisions

- a. In addition to any other evidence which may be considered, the IPRC, HPRC, and the Appellate Body may consider any previous professional review proceedings, focused reviews, other quality assurance investigations and prior disciplinary history.
- b. The IPRC, HPRC, and Appellate Body shall be staffed by the Administrator and, if requested, by legal counsel. The Administrator and legal counsel may be present during any meetings, hearings, deliberations, or other activities of the IPRC, HPRC, and Appellate Body. The Administrator shall be responsible for obtaining information, records or materials needed for the review, or requested by the IPRC, HPRC, or Appellate Body. The administrator and legal counsel may assist the IPRC, HPRC, and Appellate body in preparing their written decisions, but shall not be entitled to vote on any matters.

- c. Any discipline ordered by the Appellate Body shall begin as soon as practical after the decision, unless the Board of Directors determines otherwise.
- d. Any Practitioner who is an employee of the Group and is also subject to a professional review shall be placed on administrative leave with pay during the review. In the event the Initial Decision is adverse to the Practitioner (which includes any recommendations other than dismissal of the review), the leave shall be changed to leave without pay as of the date of the Initial Decision. Nothing in this section, however, shall preclude the Board of Directors from suspending any employed Practitioner, with or without pay, at any time before or during any review. If the provider is exonerated at the conclusion of the review, any suspension shall be changed to administrative leave, and the provider shall be paid for the time he was under review without pay.
- e. Any Practitioner who is not employed by the Group, including network affiliates, subject to a professional review by the Group shall be precluded from providing care or treatment to Kaiser Permanente members during the review. Nothing in this section shall be construed to limit or otherwise restrict the Board from exercising its contractual rights with network affiliates.
- f. A copy of the HPRC's Hearing Decision and any Final Decision issued by the Appellate Body shall be promptly forwarded to the Colorado Medical Board and any other state or federal agency as required by law. Subject to any disclosure required by law or necessary for credentialing, recredentialing, or granting of privileges, all professional review proceedings and any recommendations, reports, records or other information relating to such proceedings shall be confidential. Any documents, records or other materials provided to the Practitioner in connection with the professional review shall be returned to the Administrator. The Professional Review process set forth in this policy 4.04 shall be used only as set forth in this staff manual or as otherwise permitted by law.
- g. All professional review proceedings, recommendations, records, and reports shall be confidential consistent with state and federal law.
- h. The Board of Directors may at any time adopt and revise such further procedures and rules as it deems necessary or appropriate in connection with professional review proceedings.